UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 22-10964-mg

- x

In the Matter of:

CELSIUS NETWORK LLC,

Debtor.

- x

United States Bankruptcy Court

One Bowling Green

New York, NY 10004

August 14, 2023

10:02 AM

B E F O R E :

HON MARTIN GLENN

U.S. BANKRUPTCY JUDGE

ECRO: KS

HEARING re Zoom for Government Hearing with Respect to Confirmation of the Debtors Joint Plan of Reorganization, (III) Approving the Form of Ballots and Notices in Connection Therewith, (IV) Scheduling Certain Dates with Respect Thereto, (V) Authorizing and Approving Reimbursement of Certain of the Plan Sponsors Fees And Expenses, and (VI) Granting Related Relief. (Doc## 2970, 2971, 2977, 3011, 3061, 3084, 3104, 3115, 3116, 3117, 3118, 3122 to 3125, 3139, 3140, 3142, 3143, 3146, 3149, 3150, 3153, 3154, 3156 to 3159, 3161, 3162, 3163, 3164, 3168, 3169, 3173 to 3178, 3179, 3181, 3182, 3185 to 3188, 3201, 3202, 3206, 3129, 3130, 3133, 3134, 3135, 3137, 3206, 3210, 3214, 3215, 3219, 3220, 3222 to 3228, 3236, 3241, 3245, 3256, 3265, 3266, 3267, 3269, 3273 to 3276)

HEARING re Zoom for Government Hearing RE: Joint Motion for Entry of an Order (I) Approving the Settlement by and Among the Debtors and the Committee with Respect to the Committees Class Claim and (II) Granting Related Relief. (Doc## 3064, 3124, 3138, 3144, 3170, 3219, 3226, 3266, 3271)

HEARING re Zoom for Government Hearing RE: Motion of Terraform Labs PTE Ltd. For Leave To Serve Rule 45 Document Subpoena(s) On Debtors. (Doc## 3129, 3130, 3133, 3134, 3135, 3137, 3219)

HEARING re Status Conference RE: Rule 2004 Motion and 60(b) Motion. (Doc ## 3261 to 3264)

Transcribed by: Sonya Ledanski Hyde

A P P E A R A N C E S :

KIRKLAND & ELLIS LLP
Attorneys for Debtors
300 North Salle
Chicago, IL 60654

BY: ROSS KWASTENIET
CHRIS KOENIG
ELIZABETH JONES
DAN LATONA
CHRISTOPHER FERRARO
T.J. MCCARRICK

WHITE & CASE LLP
Attorneys for the Official Committee of Unsecured Creditors
555 South Flower Street, Suite 2700
Los Angeles, CA 90071

BY: AARON COLODNY
KEITH WOFFORD

TEXAS OFFICE OF ATTORNEY GENERAL
Attorney for Texas State Securities Board
PO Box 12548
Austin, TX 78711-2548

BY: LAYLA MILLIGAN

MCCARTER ENGLISH, LLP
Attorney for Zaryn Dentzel
245 Park Avenue
New York, NY 10167

BY: DAVID ADLER

UNITED STATES DEPARTMENT OF JUSTICE
Attorneys for the U.S. Trustee
201 Varick Street, Suite 1006, 10th Floor
New York, NY 10014

BY: SHARA CORNELL

LATHAM & WATKINS
Attorneys for Debtors
330 North Wabash Avenue, Ste 2800
Chicago, IL 60611

US SECURITIES AND EXCHANGE COMMISSION
Attorneys for the SEC
100 F Street NE
Washington, D.C. 20549

BY: THERESE SCHEUER
WILLIAM UPTEGROVE

NATIONAL ASSOCIATION OF ATTORNEYYS GENERAL
Attorneys for a Number of States
1850 M Street NW, 12th Floor
Washington, D.C. 20036

BY: KAREN CORDRY

HUGHES HUBBARD REED LLP
Attorneys for Gemini Trust Company, LLC
One Battery Park Plaza
New York, NY 10004

BY: ELIZABETH A. BEITLER

FOX ROTHSCHILD LLP
Attorneys for Mawson Infrastructure Group
49 Market Street
Morristown, NJ 07960

BY: MICHAEL R. HERZ
MICHAEL ADAM SWEET

FEDERAL TRADE COMMISSION
Attorneys for Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, D.C. 20877

BY: KATHERINE AIZPURU
KATHERINE JOHNSON

VENABLE LLP
Attorneys for Nate Tuganov
Rockefeller Center
1270 Avenue of the Americas
New York, NY 10020

BY: JEFFREY S. SABIN

LOWENSTEIN SANDLER
Attorneys for Securities Class Action Plaintiffs
One Lowenstein Drive
Roseland, NJ 07068

BY: ANDREW BEHLMANN

DENTONS US LLP
Attorneys for Terraform Labs PTE Ltd.
1221 Avenue of the Americas, 25th Floor
New York, NY 10020

BY: SARAH M. SCHRAG

WILLKIE FARR GALLAGHER LLP
Attorneys for BRIC (Blockchain Recovery Investment Consortium)
787 Seventh Avenue
New York, NY 10019

BY: BRIAN S. LENNON

TROUTMAN PEPPER
Attorneys for Ad Hoc Group of Withhold Accountholders
4000 Town Center, Suite 1800
Southfield, MI 48075

BY: DEBORAH KOVSKY-APAP

LAW OFFICE OF EDUARDO J. GLAS
Attorneys for Greg Kieser
345 Seventh Avenue, 21st Floor
New York, NY 10001

BY: EDUARDO J. GLAS

BROWN RUDNICK LLP
Attorneys for Fahrenheit LLC
7 Times Square, 47th Floor
New York, NY 10036

BY: ANDREW CARTY

KLEINBERG KAPLAN WOLFF COHEN PC
Attorneys for Harrison Schoenau
500 Fifth Avenue
New York, NY 10110

BY: DOV R. KLEINER

RUSKIN MOSCOU FALTISCHEK PC
Attorneys for Koala 1 LLC and AM Ventures Holdings, Inc.
1425 RXR Plaza, 15th Floor
Uniondale, NY 11556

BY: SHERYL P. GIUGLIANO

OFFIT KURMAN PA

Attorneys for Ad Hoc Group of Earn Account Holders

590 Madison Avenue, 6th Floor

New York, NY 10022

BY: JOYCE A. KUHNS

JASON A. NAGI

ALSO PRESENT:

JAMES RYAN

VICTOR UBIERNA DE LAS HERAS

JASON IOVINE

DANIEL FRISHBERG

OTIS DAVIS

SANTOS CACERES

COURTNEY BURKS STEADMAN

LAWRENCE PORTER

ARTUR ABREU

P R O C E E D I N G S

THE COURT: Yes, I would. Good morning, everybody. So this is the disclosure statement hearing in Celsius. Let me briefly, because there's a lot of materials, a lot of participants who've made filings, I'd like to proceed in the following way.

I want to start with a brief -- I'm asking for a brief presentation by Debtors' counsel and specifically covering any additional resolutions that have been reached since the filings were done. After the Debtors make their brief presentation, I'd like a brief presentation by the Committee as well.

Third, I would like to hear the U.S. Trustee's objections. Fourth, I'd like to hear the state or federal regulators' objections. Fifth, I'd like to hear any other creditor objections, that's both those who are represented by counsel and those who are pro se. And then finally, I would like a response from the Debtors and/or the Committee.

So that's how we'll proceed. The -- as in the past, we'll use the Zoom hand raising function when people wish to be identified, but I want to proceed, as I say, I want to proceed: Debtors, Committee, U.S. Trustee, state or federal regulators, other creditors, both those by counsel or pro se, and then the responses.

I've reviewed -- I certainly -- unless anything

came in overnight that I didn't see, it wouldn't be timely if it did, but I think I reviewed everything that's been filed on the docket so far. Who's going to begin for the Debtors?

MR. KOENIG: Good morning, Your Honor. It's Chris Koenig of Kirkland & Ellis for Celsius. Can you hear me okay?

THE COURT: Yes, I can, Mr. Koenig.

MR. KOENIG: Wonderful. So we'll start with the disclosure statement and then we'll turn to the other items on the agenda.

THE COURT: Go ahead.

MR. KOENIG: Okay. Wonderful. So, today is a very important day in the Chapter 11 cases. It is the most important hearing in the cases and the culmination of a marketing and sale process that spanned many months and ultimately culminated in a one-month long auction. At the conclusion of that auction, the Debtors and the Committee selected Fahrenheit as the plan sponsor for the Newco being proposed under the plan and we also selected the Brick as the stalking horse for the backup transaction that would be implemented if the Newco transaction cannot be completed for any reason.

And the plan and disclosure statement now include a mediated settlement between the Debtors, the Committee,

the Earn Ad Hoc Group and the Retail Borrower Ad Hoc Group that was reached after three days of mediation with Judge Wiles.

If the disclosure statement is approved today, that will allow the Debtors to commence solicitation on our Chapter 11 plan, which will lead to a confirmation hearing in early October and set us up very well for our ultimate goal of having our Chapter 11 plan go effective by the end of this year so that distributions to our creditors can commence in 2023.

We've of course received a number of objections to the disclosure statement which we'll go through in more detail, but the simple question before the Court today is whether the disclosure statement contains adequate information that is sufficient to allow a hypothetical creditor to make an informed decision to vote on the plan. And after reviewing the disclosure statement and all of its materials, the only possible answer to that question is yes.

The disclosure statement is a tome of a document. It spans more than 300 pages of body text and 400 (audio glitch) the appended exhibits, but it is not just (audio glitch) of information. Instead, the disclosure statement is carefully tailored to provide information to account holders in a form that will actually be useful to them. It includes a 23-page preliminary statement that is written not

in legalese, but in plain English to try to explain the complex plan transactions and what it means for all account holders.

This preliminary statement includes detailed charts and explanations of the options available to account holders in each of the Debtors' programs -- being Earn, Custody, Borrow, and Withhold -- and the rest of the disclosure statement likewise provides more than adequate information for account holders and other creditors. It includes 90 pages of frequently asked questions and the index of the disclosure statement includes each of those questions specifically listed out so that account holders can readily locate their question and flip to the appropriate page to get the answer.

And the disclosure statement and its exhibits also include nearly 300 pages of additional disclosure on such topics such as mining, financial projections, the history of these cases, and a description of the various settlements and transactions that are included in the plan.

Of course, not everybody supports the plan. We received a number of objections that are effectively objections to confirmation, but again, what is before the Court today is whether the plan -- whether the disclosure statement contains adequate information and the only answer is yes. To Your Honor's question, I'm pleased to report

several resolutions that we were able to reach over the past few days.

First, we've had very constructive discussions with the U.S. Trustee who objected on the grounds of both additional disclosure that they wanted to see included in the document and substantive objections that they had to the releases, the exculpations, and the KEIP that is effectively embedded in the plan.

As part of the revised disclosure statement that we filed last Wednesday, we included significant additional disclosure on the items requested by the U.S. Trustee, such as how distributions will be made to creditors. On the exculpation, we clarified in a few places in the plan that the exculpations we were seeking only cover the period from the petition date through the effective date of the plan.

For that reason, we agreed to remove the post-effective date Debtors from the exculpation because the post-effective date Debtors cannot exist pre-emergence. But we left the other entities that will be created to implement the plan such as the plan administrator and the litigation administrator, we left those entities in because those parties may well be created pre-emergence to take actions to support the implementation of the plan pre-emergence. So the exculpation would cover those pre-emergence actions, but again, the exculpation is time limited and would not cover

post-emergence actions by those entities.

We also agreed with the U.S. Trustee that we would put on the record that the Debtors and the solicitation agent will be tracking how many solicitation packages go out, how many are returned as undeliverable, how many opt-outs and opt-ins there are, and all of that detail will be included in the voting report that will be filed ahead of confirmation.

And finally, and perhaps most importantly, to preserve estate resources and in the spirit of our ongoing productive negotiations with the U.S. Trustee, we've agreed that the Debtors and the U.S. Trustee will defer the argument on the plan objections raised by the U.S. Trustee -- that is, their objections to the releases, the exculpations, and the KEIP -- to the confirmation hearing with all parties' rights reserved on that issue.

So we understand that with those agreements and clarifications on the record, the U.S. Trustee will not be pressing its objection to the disclosure statement today. We and the Committee have also had productive discussions with the Earn Ad Hoc Group who had filed a reservation of rights on governance issues and certain other issues. They amended their reservation of rights over the weekend to reflect our ongoing constructive discussions and we look forward to continuing to engage with them ahead of

confirmation.

And these constructive developments with both the U.S. Trustee and Earn Ad Hoc Group are emblematic of the way the Debtors think about the disclosure statement. We understand that not every party supports the plan today. Several of the objectors have raised substantive objections to the plan.

Those will all have to be resolved at confirmation, including issues relating to loans and CEL token. And if we're not able to reach a negotiated resolution of those issues, the Debtors will have to carry their burden at the confirmation hearing that the plan should be confirmed. But those arguments should not prevent the disclosure statement from being approved today, solicitation to commence.

So with those opening remarks (audio glitch), I'd like to -- just some housekeeping and the evidence in support of the disclosure statement motion. The disclosure statement motion sought approval of up to $5 million of expense reimbursement for Fahrenheit as the plan sponsor. Your Honor may recall that the prior stalking horse deal that we had with NovaWulf, NovaWulf had the right to receive up to $13 million of expense reimbursement. It was divided into two tranches. The first $8 million was payable before the disclosure statement hearing. The second tranche of $5

million would only be approved after the disclosure statement hearing.

So at the auction, the deal that we came to with Fahrenheit included Fahrenheit effectively slotting in for that second $5 million because the estate was already obligated to pay NovaWulf and that obligation fell away when we named Fahrenheit as the winning bidder. Fahrenheit has been working around the clock to do all of the work that is needed to stand up the Newco as part of the Chapter 11 plan. We believe their reimbursement is reasonable, should be approved today in the order approving the disclosure statement.

No party objected to this relief as part of the disclosure statement motion, but we submitted a declaration by Mr. Ferraro in support of that $5 million expense reimbursement. That that declaration is filed at Docket No. 3220 and at this time, I'd like to move it into evidence.

THE COURT: All right, are there any objections to the Court admitting into evidence the Ferraro declaration which is ECF 3220? Hearing none, it's admitted in evidence.

(Ferraro declaration entered into evidence)

MR. KOENIG: Thank you, Your Honor. Those are my preliminary comments. We filed a presentation overnight. We plan to present our case in chief, but happy to proceed however Your Honor would like. If you'd like us to present

more detailed case in chief or if you'd like to turn it over to Mr. Colodny.

THE COURT: No, I'd like to turn it over to Mr. Colodny now.

MR. KOENIG: Thank you, Judge.

THE COURT: Thank you. Mr. Colodny.

MR. COLODNY: Good morning, Judge. Aaron Colodny from White & Case on behalf of the Official Committee of Unsecured Creditors. The Committee supports the Debtors' motion to approve the disclosure statement and begin solicitation of the plan. We also filed a letter in support of the plan which is at Docket No. 3116, which will be included in the solicitation package if it is approved by the Court this morning.

I think it's safe to say that the plan is a product of a very lengthy process and it's a process that's both been competitive, collaborative, and open. It includes a month-long auction to select the plan sponsor and it also includes extensive negotiations with all of the creditor constituencies, including the Committee, the Earn Group, the Borrow Group, the Custody Group, and the Withhold Group. It also includes the results of litigation to determine the relative rights of certain of those creditor constituencies that Your Honor did earlier last year.

While we understand that certain creditors may be

dissatisfied with some of those outcomes, there will never be a perfect plan. Process was run the right way. It involves groups of creditors and a remarkable level of involvement from pro se parties and reflects all of their feedback. Debtors have now been in bankruptcy for over a year and they've worked cooperatively to develop a plan that needs to be put to a vote.

When I think about the disclosure statement, there's been a lot of pro se involvement in people that are actively involved, but a large amount of Debtors' creditors have not been, and whenever I was reviewing the disclosure statement and the ballot specifically, I put myself in the shoes of those creditors and thought, what would they need to see to cast an informed vote on the plan.

As Mr. Koenig summarized, the disclosure statement provides that information, provides a plain English summary, provides answers to frequently asked questions, detailed risk factors, tax information, financial projections, mining projections, and a dec from Fahrenheit, the plan sponsor, as to what it believes the Newco will look like.

We -- I want to specifically address the reservation of rights that was filed by the Earn Ad Hoc Group. I think that our resolution of that reservation is indicative of how these cases have progressed. We filed our reply to the Earn Ad Hoc Group. I think both parties had

their differences, but we did not stop there. We met for hours with the Earn Ad Hoc Group over the past few days discussing the matters that were raised in their objection.

We had a meeting with the Debtors and their financial advisors to go through the disclosure statements and their questions on financial projections. We had a meeting directly with the members of the Earn Ad Hoc Group and the Committee members to discuss important parts such as governance, which I want to pause for a minute to discuss.

This is not the typical Chapter 11 case where somebody -- a large party comes in, purchases the Debtors, and appoints a board. Newco will be primarily owned by creditors. And the Earn Ad Hoc Group, like a lot of creditors, feel very strongly that certain members of the board should be existing creditors in Celsius. The Committee as a fiduciary for all account holders and unsecured creditors agrees and is committed to select a qualified board with appropriate expertise and experience.

To that end, we've run the process to identify a group of qualified candidates for board positions. That group includes individuals proposed by the Earn Group including certain of its members. It also includes certain members of the Committee who have indicated they are interested to be considered for a board seat. Those committee members have spent a year serving as a fiduciary

for all creditors and devoted thousands of volunteer hours to making difficult decisions presented by this case, and I think their record speaks for itself.

I want to be clear that no decisions or promises have been made with respect to membership of the board and the Committee is committed to ensuring that all candidates are fairly considered. We will ensure a fair process is employed to make sure we get the best board to oversee the new company moving forward.

I also want to discuss the toggle feature briefly. As we discussed with Your Honor before, the toggle feature is an alternative. It is a backup transaction. It is a break in case of emergency transaction that was put into place due to the regulatory uncertainties that surround the cryptocurrency industry and the Committee and Debtors' firsthand experience watching the Voyager case where the backup transaction that they had put into place was actually executed and allowed for the return of money to creditors as quickly as possible.

It is not a transition to a new plan with different recoveries under any circumstances, and it's being solicited as part of this plan. As agreed at the mediation, the Debtors and the Committee will concert -- will consult with the Earn and Borrow Groups prior to triggering the orderly winddown or the transition to the backup plan. To

the extent that the Earn or Borrow Groups believe that the toggle is not appropriate, they will be able to raise those issues with Your Honor.

Now, the Committee has largely been silent as we've been going through this plan process from the public perspective, but the approval, if Your Honor grants it today, of the disclosure statement allows us to solicit the plan and we intend to do so. We intend to hold regular meetings and town hall meetings to walk creditors through the disclosure statement, the ballot, and other forms so that everybody can be sure that they are making an informed decision on the plan.

And I want to be clear that that will, that outreach, will be collaborative. We intend to talk to creditors, tell them why we support the plan, and to walk them through what is a complicated document that we believe provides adequate disclosure of everything required to cast an informed vote on this plan.

Unless Your Honor has any questions, I'll pass the mic to the U.S. Trustee.

THE COURT: All right, thank you very much, Mr. Colodny. Who's going to speak on behalf of the U.S. Trustee?

MS. CORNELL: Good morning, Your Honor. Shara Cornell on behalf of the Office of the United States

Trustee.

THE COURT: Good morning.

MS. CORNELL: Good morning. The United States Trustee appreciates the Debtors considering both our formal and our informal objections and issues with the disclosure statement. They amended and included a lot more information, in particular the information about adversary proceedings and preferences will generally be helpful.

There was also additional information added regarding PayPal and other distribution mechanics that we feel will benefit all voters in this case in giving them more information. In an effort to conserve estate assets and resources and the Court's time we've agreed to defer certain arguments until confirmation, if applicable still, given the Debtors revisions to their disclosure statement.

We look forward to continuing our dialogue with the Debtors to resolve as many or all of our objections, including the issues with the EIP exculpation and releases prior to confirmation. Accordingly, we reserve our rights to object at confirmation, but hope that our objections effectively previewed our issues to streamline the process for both the Court and for the Debtors.

If Your Honor has any questions for me at this time.

THE COURT: Thank you very much, Ms. Cornell. All

right, so I know that there are a group of state and federal regulators who are appearing today. If you would just raise your hand to indicate if you want to be heard and I will recognize you. All right, Ms. Cordry, I see you first, so go ahead. I'm doing them in the order I see the hands, so --

MS. CORDRY: Certainly, Your Honor. Yes, we are much in the same position, I believe, as the U.S. Trustee. We've had some discussions with the Debtor. We welcome the changes they made to address the U.S. Trustee's objections that we didn't have to make. We do still have some concerns with the precise treatment of the state claims. There will be some, I think, probably some further injunctive language we'll be talking about.

The way the claims are discussed in terms of being expunged at confirmation is something that's a problem, but again, I think those are matters we can work through substantively. I don't think they are a serious impediment and in terms of the disclosure statement, they are adequately disclosed there. We will also be interested in looking at further changes to the release language and so forth.

But again, in terms of the disclosure statement hearing, I think they are adequately described, what is currently being proposed, and any further discussions can

take place in the context of the confirmation hearing. Thank you.

THE COURT: Thank you very much, Ms. Cordry. Ms. Milligan.

MS. MILLIGAN: Good morning, Your Honor. I largely Ms. Cordry's --

THE COURT: Just indicate who you're appearing --

MS. MILLIGAN: Can you hear me?

THE COURT: Yeah, I can hear you fine, but just so I know that --

MS. MILLIGAN: I apologize.

THE COURT: I know who you are, but so everybody can know.

MS. MILLIGAN: I sincerely apologize, Your Honor. Layla Milligan with the Texas Attorney General's Office appearing on behalf of the Texas State Securities Board and Texas Department of Banking.

I largely echo Ms. Cordry's statements. We have been in discussions with the Debtors' counsel and they've made modifications. We're reserving rights to continue the discussions regarding confirmation issues, but those are confirmation issues and so we have -- again, are hopeful that we can continue those discussions as we lead up to confirmation. But I think again, I echo Ms. Cordry's statements that the issues for today have been largely

resolved. So, we'll leave it at that and I thank you, Your Honor.

THE COURT: Thank you very much, Ms. Milligan. Ms. Scheuer? I hope I'm pronouncing your name correctly.

MS. SCHEUER: Yes, Your Honor. Good morning. Therese Scheuer for the U.S. Securities and Exchange Commission. With me on the line is William Uptegrove, also for the U.S. Securities and Exchange Commission. Can Your Honor hear me okay?

THE COURT: I can, thank you.

MS. SCHEUER: Thank you. So the SEC staff has also been in discussions with the Debtors and provided them with informal comments regarding the plan and disclosure statement and many of those comments have been addressed. We did file a formal reservation of rights and in response, the Debtors have deleted the concept of tokenized illiquid recovery rights.

Your Honor, the SEC continues to reserve its rights to object to confirmation or to the winddown motion on any bases, and as stated more fully in our filing, the SEC is not opining as to the legality under the federal securities laws of the transactions outlined in the plan and is reserving its rights. Thank you, Your Honor.

THE COURT: Thank you very much, Ms. Scheuer. All right, are there any other state or federal regulators who

want to be heard? I don't see any hands. So, now I want to turn to the other creditors who have objections. If you would raise your hand, whether you're counsel appearing for creditors or pro se, I'll try and recognize you in the order in which I see the hands. Mr. Kleiner.

MR. KLEINER: Good morning, Your Honor.

THE COURT: Go ahead.

MR. KLEINER: Dov Kleiner from Kleinberg, Kaplan, Wolff, and Cohen for creditor Harrison Schoenau. Mr. Schoenau, as we mentioned in our objection, is an account holder, but he's also someone who's transacted with the Debtors during the 90 days prior to the bankruptcy filing and therefore may be subject to the avoidance actions, so we don't actually know, but we presume that's something the Debtors are considering.

We filed a limited objection which is on Docket 3161 and to be very, very clear, we don't object to the language of the disclosure statement. That wasn't the purpose of our objection. Our principal objection is that, is to the mandatory ADR procedures which the Debtors are effectively shoe horning into the plan process rather than bringing on by motion.

So we really have two objections. One is a procedural one and the other is a substantive one. The procedural one, as I said, is that under local Rule 9019,

there are procedures governing alternative dispute alternative dispute resolution specifically. General Order M452 is incorporated in the procedures governing mediation of matters and the use of early neutral evaluation.

That's very -- those procedures are very specific. Section 1.1 of those procedures says that the Court can order an ADR if it -- upon a party first filing -- a party in interest first filing a motion and after the filing of a first document in the case. In other words, two things have to have happened. One is there needs to be an actual motion, which is not the case here. And second, there actually has to be a case in controversy. In the case of avoidance actions, that would be the bringing of an adversary proceeding.

Now, it looks like the procedures are set up for claims disputes and dealing with objections to claims, and that would make sense since proofs of claim have been filed. But the Debtors have made clear that they also intend for the alternative dispute resolutions to apply to adversary proceedings and there aren't any. None have been filed yet, and so it doesn't make sense that these would be -- that the Debtors would be requiring parties to participate in alternative dispute resolutions from -- for actions that haven't yet been filed.

That's the procedural objection. If the Debtors

would like these considered and if they'd like it considered at the confirmation hearing, they need to bring on a motion. They need to identify who the proper parties are to receive service of that and notify them that their rights specifically are being compromised, and that's -- that hasn't happened here.

THE COURT: Mr. Kleiner, the only thing I would say is I've never understood what's in the general order as limiting my power to ordering ADR and in large cases, I can -- you know, there have been multiple instances over the last 16 years when I don't think that it's been in a plan itself, but I've ordered mandatory ADR over a large range of claims. I've usually built in a procedure where any creditor who objects to the ADR can file a motion to seek to be relieved from that obligation.

And certainly there haven't been a large number of those instances, but over the last 16 years, in fact, I have exercised that specific requirement and excluded parties from ADR, but the burden has been on those parties to seek to be relieved from an obligation of ADR. So I'm not sure that I see what the legal basis for your objection is. You know, in large cases in particular, let's take the preference claims which potentially do exist here. They frequently involve common issues. They may be unique issues for individual creditors, but they frequently involve common

issues as well.

So usually what I've done in the past is in -- particularly in large cases, I've insisted on the selection of somewhere between three and five suggested mediators because there's always the potential for a conflict and require that the selection of mediators come from that list. But, so I -- you know, I'm not sure. I'll give you a chance to respond about the comments I've made, but you're not getting a lot of traction from me.

Yes, they're putting this in the plan. They're putting everybody on notice on it. I'm not sure that I agree with, 100 percent with all the language that they've built in. For example, where they say it could lead to a rejection of a claim. You know, it's for the Court to decide if a party does not comply with a requirement to mediate what the remedy should be.

So, I mean, I think the language they've put in about it, one could view as precatory but, on the whole, I've been -- I'm very supportive, particularly in large and small cases, but particularly in the large cases as this one is, of a mandatory mediation require -- I do not believe mandatory mediation violates anybody's due process rights. I believe, and judges across the United States, bankruptcy judges, have often exercised what they believe is their authority, which I believe I have the authority to order

mediation.

If someone wants to object to be including in it, I've always permitted, you know, objections to be filed and I'll hear that. But so let me -- Mr. Kleiner, I'll give you a chance to respond to that.

MR. KLEINER: Sure. Thank you, Your Honor. And of course, the rules, by the way, provide that the Court can order --

THE COURT: Yeah, I know. That's exactly the point.

MR. KLEINER: Yeah. So, that's right. So -- but I dare say that if the Court were to order this on its own, I don't think it would be these procedures. There would be a much fairer set of procedure and ones that were specifically designed to accommodate the issues that are going to be raised in the avoidance action litigation.

As you know, there was an entire trial set up in the Custody and Withhold litigation -- I think it was supposed to be phase two -- that was never reached because -- the issues weren't litigated because the parties reached a settlement. Those issues will need to be litigated at some point.

And as far as I know, and I can't speak from Ms. Kovsky who I understand may have had discussions with the Debtors, we haven't participated in the designing of these

procedures. These procedures were designed by the Debtors for their own purposes and for their own benefit without the input of the potential claimants, or in this case, the potential defendants.

If the Court is going to implement alternative dispute resolution procedures that govern and affect the rights of avoidance action defendants, then those parties ought to at least participate in the designing of the procedures so they're fair. These are specifically one sided, designed to advantage the Debtors.

THE COURT: You know, Mr. Kleiner, I hear you, but in the past I've approved procedures that I believe are fair and not all creditors who wind up having to engage in ADR have a voice in that. So, all right. Let me hear from Ms. Kovsky next.

MS. KOVSKY-APAP: Good morning, Your Honor. Deb Kovsky, Troutman Pepper for the Ad Hoc group of Withhold Accountholders and other transferees. We filed what is largely a statement and reservation of rights recognizing that these issues are probably better deferred to confirmation or better yet to a negotiated resolution with the Debtors and the Committee ahead of confirmation.

THE COURT: That's what I would really hope would happen, so.

MS. KOVSKY-APAP: And that is what we are working

on, Your Honor. We've had productive discussions. We've exchanged drafts and I'm hopeful that we will get to a negotiated resolution. To be very clear, the Ad Hoc Group is not opposed to the concept of ADR. I am personally a huge fan of it.

I think that particularly given the number and scope of potential accountholder actions that might be brought against accountholders that transacted with the Debtors in the 90 days before the petition date, it's just not going to be workable otherwise. And accountholders need to have an opportunity to, if they wish to, have some kind of an organized path to a negotiated resolution.

Our concerns are more about the mandatory nature of the ADR procedures with respect to accountholders that have not been sued or served, and the fact that they could require someone who is not even yet a defendant in a preference lawsuit to affirmatively put a proposal on the table and to offer to settle a claim that hasn't been made against them yet, at risk of losing their scheduled claim in the case, which as Your Honor has already indicated, might be a little a little beyond the pale.

There's also some other issues with one-sided discovery and other things that are really not -- it's essentially that these procedures need to be modified to make sure that they're protecting the rights of potential

defendants, both in terms of the mandatory nature of prelitigation ADR as well as sort of once the ADR is commenced to ensure that both sides have an equal opportunity and are on equal footing so that they can potentially reach consensual resolutions.

But as I said, the Ad Hoc Group intends to continue to work with the Debtors and with the Committee and hopefully be able to tweak some of the provisions of the ADR procedures so that they do work for everyone.

THE COURT: Thank you, Ms. Kovsky. Mr. Porter. I'm going in the order -- I wrote down names as I saw hands go up, so Mr. Porter next.

MR. PORTER: Good day, Judge Glenn. My name is Lawrence C. Porter. I am a creditor at Celsius. First and foremost, I want to thank everyone for the progress we have made so far. We are very worried because after an analyzing this new company that the Debtor and the UCC are intent on jamming us into, we now know it is a bad deal for creditors. They have made guesstimates on future revenue that are based on nothing more than "hopium" and creditors will be asked to lose more of their money in this new venture.

Ten minutes of analysis will tell anyone who takes the time to look at the facts that we are being jammed into a bad deal and what we all want is to get back as much of our money as possible, because that's the reason why we

initially invested in Celsius, to have the opportunity to withdraw at any time, definitely not to be forced into a highly speculative bitcoin mining venture, a forced investment where the sharing agreement is so lopsided that it makes no sense for creditors to assume new risk.

Please see it in your wisdom to enable creditors to have an orderly winddown of Celsius business so we can maximize our return, not to be forced into another bad investment. Thank you.

THE COURT: Thank you very much, Mr. Porter. The next name, and I apologize. I didn't get it whether it was a mister or a miss, is Behlmann, B-E-H-L-M-A-N-N.

MR. BEHLMANN: Good morning, Your Honor. Andrew Behlmann from Lowenstein Sandler on behalf of the lead plaintiffs in the Celsius securities litigation. Your Honor, we filed a limited objection at Docket No. 3149. In that objection, we raised six discrete issues. I'm pleased not to be before Your Honor this morning on all six of those discrete issues. Three of those issues have been resolved between the amended documents and the Debtors' reply brief.

The Debtors have confirmed in their reply brief that all of the non-debtor defendants in the securities litigation are not and will not be receiving releases under the plan. They've added a summary of the securities litigation to Article 7 of the disclosure statement and

they've added a post-confirmation evidence preservation obligation to the plan in Article 8 and referenced that in disclosure statement Article 3. All good things from our perspective.

There are three issues remaining that we do see some overlap between the disclosure statement stage and confirmation. As the Debtors have indicated, these are all confirmation issues. Our view is that they are sort of a hybrid that overlaps the two and I'll explain why in a second.

Those three issues are the preservation of claims against the Debtors to the extent of Side C D&O coverage; confirmation that the plan will not alter any party's rights with respect to D&O coverage, given the assignment of the D&O policies and certain rights thereunder to a litigation administrator to be appointed; and third and potentially the most difficult but hopefully not, is the assignment of claims arising under the federal securities laws pursuant to the contribution of claims mechanism in the plan.

With respect to Side C D&O coverage, Your Honor, the Debtors' position, our position is that claims against the Debtors in the securities litigation, which we recognize to the extent they arise under the federal securities laws or arise from purchases or sales or securities of the Debtors are subordinated pursuant to Section 510(b) of the

Bankruptcy Code, but we believe that those claims against the Debtors should be preserved to the extent any Side C D&O insurance coverage exists at the end of the day. And I'll explain why in a second. The Debtors' position is they don't believe there will be any Side C coverage left at the end of the day, and because that's their current belief, the plan shouldn't have to preserve claims against the Debtors to the extent any such coverage does exist.

They say it might be misleading to creditors. The problem is, if there is any Side C coverage remaining, the coverage only exists by definition for payment of securities claims against the Debtors. Substantially every corporate D&O policy written in the last 20 years, as Your Honor is well aware, contains a priority of payments provision that subordinates the company's rights under Side C to the rights of any individual insurers.

So the only party that gets a potential windfall by failing to preserve claims against the Debtors to the extent Side C coverage exists are the D&O coverage insurers themselves. How this ties back to disclosure is the Debtors assert that preserving claims would be misleading because they believe there will be no insurance. But really, that's beside the point.

All they have to do if they were to modify the plan to say securities fraud claims against the Debtors are

preserved to the extent of available insurance, if any, is say "if any" in the plan and add one sentence to the disclosure statement that expresses their view that they don't think there will be any. That's all they have to do to avoid being misleading, if that is truly their concern.

THE COURT: May I ask you this?

MR. BEHLMANN: Yes, Your Honor.

THE COURT: Have you proposed any specific language? Because it would seem to me that a sentence or at most two would address the issue you're raising. Have you proposed specific language to the Debtor and the Committee for -- to be added to the disclosure statement? I think, you know, at bottom, the issue may be a confirmation issue, but in terms of a disclosure issue, what it is that your argument is and what their argument in one sentence, what their argument is about why it shouldn't be included and then it would be a confirmation issue. Have you done that?

MR. BEHLMANN: Your Honor, beyond what the parties have said in our respective pleadings, we have not, but we would certainly be happy to propose language at the end of this hearing to the Debtors and the Committee.

THE COURT: All right. We'll see where we get to, but anything else you want to add, Mr. Behlmann?

MR. BEHLMANN: Yes, Your Honor. So there's two other issues. The second issue is that our view is that the

disclosure statement in light of the proposed assignment of the D&O policies pursuant to the plan and the fact that the plan in Article 4 says that one of the tasks of the litigation administrator will be "managing the rights to D&O liability insurance policies," we have asked for in our limited objection a simple explanation in the disclosure statement that the plan does not alter anyone's rights under or any of the provisions of the Debtors' D&O insurance policies.

We believe, you know, the plan has to be insurance neutral. So we don't necessarily understand why this is a controversial request or why the, you know, the Debtors treated it as such in their reply. But our, you know, our view is the plan should be insurance neutral and if it's not, the Debtors should very clearly explain the manner in which it's not because that will certainly be a confirmation concern.

The third issue, Your Honor, is on the contributed claims mechanism. And this one from our perspective is a little more thorny, although we don't know that it necessarily needs to be. We recognize, as the Debtors assert, that this is a confirmation issue, but because the claims contribution mechanism is built into the solicitation procedures and is built into the form of ballot for creditors in voting classes, we believe it does warrant some

discussion in connection with the disclosure statement.

So the plan gives creditors in voting classes the option to elect to contribute their claims against third parties that relate to the Debtor back to the estate for collective prosecution by a litigation administrator and participate in the proceeds thereof by virtue of their claims against the Debtor.

Creditors in impaired non-voting classes such as a securities class member who had closed their Celsius account prior to the petition date, they don't have that option, which we think makes perfect sense because they're receiving nothing under the plan. If they were to check the box, they'd be giving something away in exchange for absolutely nothing.

But for those that do, the mechanism is potentially problematic with respect to securities fraud claims. We think that the contribution language as drafted is potentially broad enough to sweep in, in electing creditors' claims under the federal securities laws. Those are claims that a member of the putative class and the securities class action may not even know he or she has at this point because the class action is in its relative infancy.

So they're being asked at this point to make a decision that prematurely deprives them of the opportunity

to participate in the securities class action, which is a case that's being prosecuted and has been prosecuted for more than a year, by specialized sophisticated Court-appointed lead counsel that specializes in securities cases in favor of some unknown mechanism to be designed in the future.

And the real problem is that once a creditor makes that election, they don't have the opportunity to undo it. So somebody, you know, somebody gives their claim to the estate, they -- you know, once they check the box and mail the form in, they have apparently forever given up the opportunity to participate in the securities class action.

The other issue, the Debtors suggest that those claims are assignable as a matter of law, although they don't cite any. Our position is that those claims may not be assignable.

THE COURT: Well, you can raise that at confirmation. I mean, that would be a confirmation issue.

MR. BEHLMANN: Certainly, Your Honor, and there is one disclosure issue, though, that we think arises from that. There is only one reported case I'm aware of where creditors were given the opportunity to assign 10(b) claims to a liquidating trust pursuant to an election in a plan. That was Gavin/Solomonese LLC v. D'Arnaud-Taylor, 68 F. Supp. 3d 530 (SDNY).

Nobody there challenged the assignability of the claims, so we don't have any guidance on that point, but there was a practical concern in that case that warrants consideration here, given the timing and that is all of the 10)(b) claims that were brought by the liquidating trustee after the plan was confirmed ended up getting dismissed because they were time barred because section B -- 10(b) contains a limitations period of two years after discovery or five years from the violation, whichever is earlier.

That two-year clock has certainly been ticking for at least a year and the contribution mechanism creates a material risk of that clock running out before a litigation administrator has an opportunity to investigate and file a suit. So at an absolute minimum, we think the disclosure statement and the ballots should make that risk clear as well as the possible issue of non-assignability of securities fraud claims clear. You know --

THE COURT: Thank you, Mr. Behlmann.

MR. BEHLMANN: Thank you.

THE COURT: All right, next is Ms. Kuhns. You're muted.

MS. KUHNS: I am. Can you hear me now?

THE COURT: Yeah, I can hear you now. Go ahead.

MS. KUHNS: Okay. Good morning, Your Honor. Joyce Kuhns of Offit Kurman on behalf of the Earn Ad Hoc

Group. I want to just reiterate what Mr. Koenig and Mr. Colodny said. We did file a reservation of rights. I am happy to say that prompted a very comprehensive and constructive dialogue with the Debtors and their counsel and their advisors and the Committee and its counsel and advisers, as well as a separate call on Friday with the Committee and counsel and then the plan sponsor and counsel.

They listened, we listened, we believe they understand our concerns and we have a better understanding of their process, and that has been reflected in the supplement that we put of record on Friday. And so at this point, we do look forward to the process continuing after approval of the disclosure statement and for what we see as an opportunity now for the Debtors and the Committee to engage in a broader dialogue with the creditors on the merits of the plan.

THE COURT: Thank you very much, Ms. Kuhns. Mr. Glas.

MR. GLAS: Good morning, Your Honor. Eduardo Glas from the Law Office of Eduardo Glas. I'm representing Mr. Kieser, a large retail borrower claimant. He also has liquidated loan claims and we submitted an objection to the disclosure statement that essentially has three parts. The first one deals with the subordination of the Earn claims verse one to Section 510(b). The second one deals with the

failure to treat the liquidated loans as a class in itself. And the third is the failure to treat the active retail loans as executory contracts.

And I'll deal first with the subordination of the Earn claims. There's been quite a number of filings in different cases in different Courts dealing with this issue, most recently in the Southern District. The Debtor has entered into a non-prosecution agreement with the U.S. Attorney's Office and also in a settlement with the SEC where the Debtor has essentially admitted that the Earn program was a security and as such, it is -- now would be stopped from arguing before Your Honor that the Earn is not a security.

We submit that as a security, it is covered by 510(b). The claims that have been asserted against the Debtor based on the Earn program and therefore they should be subordinated and the plan does -- I'm sorry, the disclosure statement doesn't have any information regarding that. With respect to the liquidated loans, the liquidated loans, the claimants that have these claims essentially have non-crypto claims.

These are breach of contract claims and the Debtor has, I think after receiving our objection has added some language clarifying how these claims are supposed to be treated, but the language still does not cover precisely how

these claimants should be classified because the Debtor essentially is treating them either as Earn claims for those liquidated loans which have received back whatever was left after the liquidation of collateral.

They could have gone into an Earn account or a custody account, and if there is no account left after the liquidation or meaning there is no collateral to be sent back to an account, the Debtor is saying that these claims are essentially unsecured claims that are disputed.

And our position is that even if there was a collateral return to an Earn account, the earned account holder claim definition only covers the deposits into those Earn accounts but it doesn't include the, as I said, the non-crypto claims, the breach of contract claims that these claimants would have. And so they should have a revised definition if they don't want -- at least they should have a revised definition if they don't want to set up another class for the liquidated loans within the Earn accountholders' definition that includes the non-crypto claims.

And finally, our third point deals with the active retail loans and that they should be treated as executory contracts. The Debtors pose in the disclosure statement and in the plan, they are treating the institutional loans as executory contracts. But the plan nor the disclosure

statement treats the retail loans in a way that should be analogous to the treatment of the institutional loans. Now the Debtor says that there are differences with the terms in the institutional loans that they are more individualized, but that is not really -- or I should say it's a meaningless distinction.

The idea is whether -- or what the Court needs to consider is whether there are unperformed obligations on both sides and clearly both the institutional loans and the retail loans both have obligations on both sides. And that's why the retail loans as the institutional loans should be treated as executory contracts. And this is important because even if the Debtor says that it doesn't make any difference as far as the plan, it does, because the rejection of the contract has consequences.

There may be a lot of borrowers who do not want to terminate the borrowing agreement and the Debtor, because of the rejection, would be unable to exercise rights under the agreement, such as terminating the loans or trying to set off against the collateral.

THE COURT: So doesn't the Debtor have the right to refuse to -- assuming they are executory contracts, the Debtor can reject them. That's not a creditor's right. It's the Debtor's right.

MR. GLAS: Absolutely, Your Honor. The Debtor can

reject them. And what we're saying is that if the agreements are executory and they are deemed rejected because they are not being assumed under the plan, there should be some disclosure as to the consequences of that in terms of the ability of the borrowers to continue to perform if they choose so under those loans.

THE COURT: All right. Thank you very much, Mr. Glas.

MR. GLAS: Thank you.

THE COURT: Bear with me a second here. All right, next is Mr. Ubierna de las Heras.

MR. UBIERNA DE LAS HERAS: Good morning, Your Honor. Victor Ubierna de las Heras, pro se creditor. I filed an objection with Docket No. 3169. In that objection, I raised three different items and items one and two, I consider them resolved. The Debtors filed an amended disclosure statement where they included some language to address what I was saying, so I consider number -- items one and two resolved.

But then no changes to mining portion on updated disclosure statement for Celsius Newco. There are no costs, no expenses, no short- or long-term cost projections, no contract terms for hosting, leasing, profit selling, et cetera. More information regarding the mining portion needs to be included on the disclosure statement for creditors to

make an informed decision. Thank you for your time.

THE COURT: Thank you very much. Mr. Abreu.

I had written down on my list an objection by Mr. Abreu. Is there -- I may be mispronouncing it and I apologize if I am. Does Mr. Abreu wish to be heard? All right.

MR. ABREU: Sorry, sorry. Can you hear me?

THE COURT: Yeah, I can hear you now.

MR. ABREU: Sorry. It was muted on my side.

THE COURT: Okay.

MR. ABREU: Your Honor, I am pro se creator and for full disclosure, I was one of the main driving forces of CEL token market appreciation from July 27th to August 20. This was done by was done by exploiting the artificial naked short and the (indiscernible) short position when it came to sale on centralized exchanges, mainly FTX. These efforts did not result against me and I'm also a creditor on FTX bankruptcy. And also for full disclosure, I did short FTT token, a similar token, a similar FTX token to that of CEL.

I want to be brief in this matter, but again, the issue I have is with the general treatment of CEL by giving, again, an arbitrary value and not having different treatments when it comes to CEL. CEL is only a complex issue when you treat it as one asset. But similar to what Judge Analisa Torres ruled on the CAC v. Ripple case, once

you look at CEL from perspective of creditors and parties and how this was deployed, It's straightforward.

Currently, CEL is a currency as it lives outside the Debtors and its efforts. It will be forever accepted as a means of exchange on the Ethereum network. It's fungible. The durability of the currency is tied to the durability of the terminal blockchain. Supply is capped on the (indiscernible) of the currency, so this will not change. It might not be recognized as other cryptocurrencies, but it's clearly not unknown when it comes -- when you consider especially the current media light.

So if currently -- CEL currently matches the description of a currency, it means it was at least always a currency the whole time. The question is what other traits it shares, potentially other assets and/or securities, special when there were significant efforts including those of Celsius network, the Debtors.

One of the main issues I have is by some previous comments by the UCC members that employees would get a recovery on their CEL, especially employees who receive CEL at zero cost. And this -- and they are currently creditors, meaning they have a claim for CEL. I believe the amount of CEL token by these employees including also insiders is significant. On the examiner's report, Docket 1956, Page 489, I match the current -- the list of insiders and

employees with those which are public credit claims and 32.4 percent of -- and they represent 32.4% of the total CEL tokens claims. So that's $58,000 on claims at the filing price 81 cents. I believe there is not significant disclosures when it comes to these employees. I even believe that by offering a recovery for these employees that is not CEL native or zero altogether constitutes the sale of the registered -- unregistered securities by the company.

I see CEL when there are efforts from the company as a unregistered security when it's traded freely on the open market and from a person to a person is not a registered security. So if these employees are being bought from the estates at any price altogether, you are buying (indiscernible) security that was distributed as equity. And for context, I contact a former employee who joined the company in 2020. He was a low level employee and he -- and from his tenure or for -- from the period that he was an employee, he got 150,000 CEL tokens at zero cost.

This is very significant because he was a low level employee and by matching other employees and other high level insiders, they -- their amount of CEL is completely (indiscernible) I should. Also, if you look at the claims, around 52 percent of the entire creditor CEL token claims are held by 250 people. This I think is a fair assessment that there is significant employee CEL tokens

that in my view was distributed as equity that are potentially getting a recovery on this plan.

I also have to mention that I also bought CEL OTC, but I sell most of it so -- but I'm trying to defend those people who actually bought OTC CEL from the company. I believe this violated many, many laws because there was a complete disregard by the company by selling this unregistered security and having no disclosures.

So the company was already having issues financially in 2022 and they were still selling CEL token. No disclosure was given about the health of the company and they even went to misrepresent and scrub statements of the CEO on live streams prior to loading. This is mind boggling and in a public company will be a crime.

Also the level of dilution of CEL token by giving for free, non-traded CEL controlled by the company to employees completely disregarding the pricing pack and especially in a slower user growth environment, again, is an important disclosure that is not given. Not disclosing and having the CEL being sold by insiders. By having the company purchase internally and not disclosing all the related CEL holdings by the CEO and controlled entities of these insiders also is a disclosure that's not given that when you are dealing with selling a public stock, it's always given and you can see it.

Not disclosing the level of (indiscernible) of the company and what was engaged and the size of the liquid assets, not disclosing the price support strategies of sale, especially when these were (indiscernible) or gradually reduced according to the examiner's report. It's due to this level of fraud and misrepresentation that all OTC investors must be given an option of preference in the recovery. This has to be accounted for.

THE COURT: Let me ask -- let me ask you this question.

MR. ABREU: Go ahead.

THE COURT: I mean, if in fact what the examiner's report -- it's not evidence, it's hearsay -- but taking, let's take it at its face value. The examiner's report included a chart that showed the substantial insider, I would my characterization, not hers, washed transactions between the freeze date and the petition date, that arguably -- well, it increased the apparent value of CEL from like 20 cents to 81 cents and if the issue is a valuation at the petition date, it may be zero.

And what the Debtor and the Committee -- Debtors and Committee have proposed is now increased from 20 cents to 25 cents. But, if the valuation is challenged and relevant to bankruptcy is the valuation at the petition date, the fact that it may have appeared to trade at 81

cents doesn't mean that's the value. If the Court were to do a valuation, determined that the value was zero, there'd be no recovery for CEL token holders.

MR. ABREU: I believe it's very important to mention that those people that had CEL inside the app was prevented from selling. This is -- this does not happen to a stock. If you are arguing that CEL token is equity, then equity is always traded, even in bankruptcy. So if I had --

THE COURT: Yes, but what I have to do is value it in the Debtors' plan.

MR. ABREU: But I can give --

THE COURT: And if I -- stop. Stop.

MR. ABREU: Okay.

THE COURT: If I conduct evaluation, if somehow the settlement that the Debtors and the Committee have proposed at 25 cents, if that's not accepted and the Court conducts the valuation and concludes that the petition date, the value of the CEL token was zero, that would determine what the recovery in the plan would be.

MR. ABREU: So there is no argument when you are basically blocking people from selling that asset?

THE COURT: We'll let the debtor respond to that. Is there anything else you wish to add, Mr. Abreu?

MR. ABREU: I just want to say that about the 81 cents, I believe the examiner's report again should be taken

with a huge grain of salt. As I was saying, I was one of the main efforts. And what -- there is no mention --

THE COURT: The one thing I don't do is take the examiner's report with a grain of salt.

MR. ABREU: I agree. I agree.

THE COURT: You might --

MR. ABREU: -- clear.

THE COURT: You might --

MR. ABREU: You, Judge, were very clear on that.

THE COURT: But I don't. It's hearsay. It doesn't determine the value.

MR. ABREU: Exactly, but just for a comparison, my efforts were done inside the centralized exchanges and they cannot be seen on the blockchain. And the other efforts that I know of by other insiders in CEL was basically removing the CEL supply that was being shorted, naked shorted, by other centralized exchanges. So this had -- this forced those centralized exchanges to go to the market and basically back the naked short position. So they were borrowing, imagine 10 million CEL spots that were -- that they had the right -- the control. So they removed from the exchanges. This force by this creditors. It's their tokens. It's outside their app and they were following market rules by removing the supply. This --

THE COURT: All right. All right, stop. I

understand your arguments. Mr. Caceres next.

MR. CACERES: Good morning, Your Honor.

THE COURT: Good morning.

MR. CACERES: Since my motion to price non-insider CEL token at petition date prices was heard and denied without prejudice, I have met three times with the UCC to find a middle ground. But unfortunately, the UCC only improved their offer by one penny.

THE COURT: No, by five cents, 20 to 25.

MR. CACERES: In the discussions that we've had, they've never brought that up, Your Honor.

THE COURT: The amended disclosure statement, the revised disclosure statement says 25 cents.

MR. CACERES: Correct. I'm referring to the discussions that we had.

THE COURT: All right, go ahead.

MR. CACERES: Your Honor, only one member of the UCC has a CEL token claim that is worth fighting for. All other members of the UCC will get a larger recovery as the disclosure statement and the loans and Earn settlement is currently written. There has been an abundance of irrelevant arguments presented by the UCC to justify diminishing the value of CEL token.

All this noise has created very lawyer-lucrative complexity around what really is a very simple dispute.

When distilled to only relevant facts, what is left is three points. Number one, the Ripple case and XRP case has set the precedent that CEL is not a security. Only some initial sales can be considered as such. Number two, the Voyager case has set the precedent that CEL token does not confer neither the advantages nor the obligations of an equity security.

The Voyager VGX token was not subjugated but rather awarded its petition date value. And number three, despite over 600 pages of the examiner report, it presents hearsay, obscurity, intentionally misleading charts, and yet no meaningful evidence that Celsius nor its founders manipulated the price of CEL to their benefit.

The examiner report completely disregards the illegal FTX naked short and distort campaign that destroyed the CEL token price from $3 to 20 cents. Your Honor, non-insider CEL token holders were exposed to the same risks, founder mismanagement, damages than any other holder on the Celsius platform. Given that the UCC equity security suggestion of CEL is now invalid due to the Ripple and Voyager precedents and that the arguments of CEL market manipulation are without merit, we cannot isolate CEL tokens from any other token on the platform.

Fifty-two percent of retail Celsius customers have CEL in their balances. We must put an end to the UCC's

unlimited resource campaign to overwhelm the Court with irrelevant noise, Your Honor, and I repeat irrelevant noise, over what always has been and remains a simple matter. We must allow everyone to make progress towards exiting Chapter 11, creating Newco value maximizing solution, and receive distributions.

Lastly, Your Honor, I request that this Court does not allow the settlement between the Earns and the Borrow and does not approve the disclosure statement until the non-insider CEL token issues have been resolved. Once again, non-insider CEL token claims should be treated equitably at the petition date price of 81 cents consistent with U.S. bankruptcy law. Thank you again --

THE COURT: Yeah, the U.S. bankruptcy law --

MR. CACERES: -- for the time --

THE COURT: I'm sorry. Now, the U.S. Bankruptcy Code requires that I determine the value of the claims as of the petition date. If the market was manipulated, the 81 cents would not reflect the actual value. So it would require a valuation. It is not -- you don't get simply to rely on the fact that if -- let's assume there was manipulation and it resulted in the price going from 20 cents to 81 cents and I realize that it had been much higher earlier, but from the freeze date to the petition date, it went, I think from 20 cents to 81 cents.

That doesn't necessarily reflect the value on that date. You simply want to rely on the fact that it appears to have had an 81 cents value at the petition date, but that isn't necessarily the value. You want to cut out all of that, and what the Debtor and the Committee are trying to do is resolve this disputed issue because it may turn out, Mr. Caceres, that the value is zero, not 81 cents.

MR. CACERES: Your Honor, if I may say, when there's open shorts, when the price is destroyed from $3 to 20 cents, there's open shorts and those open shorts need to be covered. So from the pause date to the petition date, that could have been the open shorts being covered as the blockchain might suggest. So it would be a good idea if we engage in a valuation and it would be a good idea to see how that price went from 20 cents to 81 cents.

THE COURT: All right. Thank you very much, Mr. Caceres. Ms. Giugliano.

MS. GIUGLIANO: Good morning, Your Honor. Cheryl Giugliano, Ruskin Moscow Faltischek for Koala 1 LLC and AM Ventures Holdings. Can you hear me okay?

THE COURT: Yes, I can.

MS. GIUGLIANO: Thank you, Your Honor. I'm appearing, again, on behalf of Koala and AM Venture Holdings with objections filed at ECF doc numbers 3156 for Koala 1 and 3153 for AM Venture Holdings. The objections are

substantially similar and argue that the disclosure statement does not provide adequate information with respect to the proposed equitable subordination of retail customer claims on behalf of Koala and AM Ventures in certain Earn account, and really all claim holders whose claims will be equitably subordinated as a result of their alleged affiliation with Mr. Mashinsky or other insiders. The claims are not listed for Koala 1 and AM Ventures as disputed contingent or unliquidated.

Your Honor, equitable subordination is an extraordinary remedy that is to be used sparingly as noted by this Court. Bankruptcy Code Section 510(c) provides that after noticing a hearing, the Court may equitably subordinate hearings for distribution purposes, but it doesn't provide for extinguishing and canceling claims.

THE COURT: Isn't this a -- isn't this a confirmation issue?

MS. GIUGLIANO: Well, Your Honor, with respect to whether or not the claims should be equitably subordinated, it's possible that it could be raised as a plan confirmation issue. I think the problem is that the disclosure statement contains the same statements that are in the plan which are statements by the examiner's report, which I appreciate that the Court holds in high regard and -- but they're not findings by the Court and statements by the Debtors and the

Committee and complaints that were not yet filed.

And so, while additional language was added to the disclosure statement and it's addressed in the omnibus reply, which we very much appreciate, those are not findings by the Court and so there is no --

THE COURT: Am I correct that the Committee sent the Debtors a draft of a proposed complaint. It was attached as Exhibit 2 to the motion of the Official Unsecured Creditors Committee to approve joint stipulation that included a complaint against K1?

MS. GIUGLIANO: Yes, that is correct, Your Honor. But again, that's a complaint that hasn't been prosecuted or heard by the Court.

THE COURT: Would you like them to file it tomorrow?

MS. GIUGLIANO: No, that's not what I'm -- that's not what I'm saying, Your Honor. All I'm saying is that equitable subordination is -- even if it's included in a plan -- and you're right, Your Honor, that that could be heard as part of a plan confirmation hearing -- all I would say is that -- and hopefully we can discuss with the Debtors' counsel and Committee's counsel when they're available, is that perhaps it's premature to be proposing to equitably subordinate these claims on the confirmation hearing date when those conclusions by this Court could

prejudice those parties in civil and criminal proceedings that are ongoing, and there's really no reason that the equitable subordination, if it were to be approved, would have to happen -- or why it has to be approved and considered as part of the plan on the confirmation date when there -- really there should be notice and hearing and also, Your Honor, there are ongoing proceedings, criminal and civil, against insiders where if equitable subordination is approved by this Court as part of the plan confirmation hearing, we think prematurely it could prejudice those parties and there's really no reason that that --

THE COURT: Would there be preclusive -- would there be preclusive effect in a criminal case if this Court makes a determination at confirmation? There --

MS. GIUGLIANO: It wouldn't be -- I'm sorry, Your Honor.

THE COURT: No, go ahead.

MS. GIUGLIANO: No, no, no, I'm -- to interrupt the Court, Your Honor. I was just saying, it wouldn't be helpful whether or not --

THE COURT: Well, you might not like it. I understand that.

MS. GIUGLIANO: Yeah, I'm not sure how it would harm the Debtors, the estate, or the administration or confirmation of a plan to say that equitable subordination

would not occur unless and until there are findings of fact and conclusions of law and --

THE COURT: I don't have to wait. It could be years before a criminal case is resolved. I don't wait for plan confirmation until, you know, state court criminal cases are resolved or federal court criminal cases are resolved. Not only criminal but, you know, the state attorney general has a lawsuit against Mr. Mashinsky and the judge recently denied the motion to dismiss. So --

MS. GIUGLIANO: Yes --

THE COURT: But that's at a pleading stage. It could be years before that's finally resolved. I don't put this on hold while state or federal court criminal or civil cases go on.

MS. GIUGLIANO: Yes, Your Honor. That's true and I would never propose that the plan confirmation -- these parties would never propose that plan confirmation be put off for that long, but there are also included as part of the plan, actions and proceedings that will also likely or could take years and the distributions that result from recoveries from those actions will be -- of course, happen after the proceedings take place.

So while I'm not suggesting at all that the Court put off confirmation of the plan, it wouldn't be unreasonable to -- for the Debtors and the Committee to

consider that the equitable subordination of the proposed claims be put off until those hearings are concluded, and my understanding from speaking --

THE COURT: Okay. I hear your argument. Mr. Davis.

MS. GIUGLIANO: Thank you, Your Honor.

MR. DAVIS: Thank you, Judge. At your last hearing on July 28th, you did mention that we CEL token group deserve a fair fight. At Docket No. 3084, I did file a motion with requesting that. I do have a statement, Judge, that I would like to read. It's about 10 minutes. And if that's --

THE COURT: Well that's a little long, but go ahead, start your statement and I'll see. Go ahead.

MR. DAVIS: Sure. Your Honor, the UCC through their lawyers White & Case have stated not one scintilla of evidence, facts, or basis in law about, "Finally, the request made by certain holders of CEL token deposit claims, chief among them Mr. Davis and Mr. Caceres, should be rejected."

Judge, this is nothing but hot air being spewed by the UCC to this Court. They cannot find any legitimate reason to subordinate CEL token holders' claims from 81 cents so now they wish to take another bite of the apple by attempting to personally smear me as a creditor instead of -

THE COURT: Mr. Davis, I've already -- stop. I've already made clear that the 81 cents is not necessarily the value on the petition date, which is the relevant thing for the Bankruptcy Court. Okay? You do not get an automatic 81 cents because it may have traded at that price at the petition date.

MR. DAVIS: Understood, Judge. Can we have a valuation hearing to determine the price? My position is CEL token is above 81 cents. So only -- that can only be fleshed out at a valuation hearing. And I also requested a CEL token ad hoc group in my motion.

THE COURT: I'm not approving an ad hoc group. Go on with your argument.

MR. DAVIS: Okay, let me read. Your Honor, the relief that I'm respectfully seeking from this Court is that the Court recognize the legal precedent that has been set in the Ripple case and the clear -- the CEL tokens held by users are not a security; that the UCC's attempt to subordinate the CEL token holders be set aside and declared nullified; that the settlement made by the UCC be nullified as being predicated upon no basis in fact or law; and that a valuation hearing be scheduled for a proper determination of the petition date price; that the settlement be set aside between Loans, Earn, and the UCC based on the fact that CEL token holders had no seat at the table to be able to

participate in that settlement and a separate new class of CEL token holders be established to protect their rights fairly and equitably.

I just heard what you said that you will not approve it.

THE COURT: Is there anything else you want to add?

MR. DAVIS: No, that's the sum and substance of it.

THE COURT: All right, thank you.

MR. DAVIS: I think -- I just think we deserve a fair fight. We are 35,000 CEL token holders and we have no representation.

THE COURT: Mr. Holcomb.

MR. HOLCOMB: Good morning, Your Honor. Can you hear me?

THE COURT: Yes, go ahead.

MR. HOLCOMB: Yeah, Lucas Holcomb. Pro se creditor. As always, please forgive my ignorance of the legal system. I just present this issue as I want to be sure that I don't inadvertently forfeit my right to a claim against the Debtor by doing nothing. In a previous hearing, Your Honor asked the Debtor and their counsel to work with me on unsuspending my accounts and roughly two months of contact with the Debtor counsel, they were able to tell me

why my accounts were suspended but did not offer a possibility of resolution.

On July 20th, I wrote a letter to Your Honor which is Docket 3065 stating the circumstances of my suspended accounts. Since then, the Debtor has written a reply letter, Docket 3126, in which they stated they are amenable to removing the suspension. On August 1st, I replied to their letter Docket 3132, offering a potential solution to my suspended accounts.

This morning before Court proceedings, I was able to reach Chris Koenig from the Debtors counsel and he stated that he will further look into the matter tomorrow with the goal of reaching a mutually agreeable solution. Of course, I'm happy to hear that and I'm hopeful that we can come to a fair agreement quickly. However, in case the solution between myself and the Debtor or the multiple other individuals with suspended accounts cannot be reached, I'm wondering if the disclosure statement or plan should reference treatment of those with suspended accounts.

THE COURT: Okay. I'm making notes of this.

MR. HOLCOMB: Thank you, Your Honor.

THE COURT: Anything else?

MR. HOLCOMB: Again, I'm hopeful that we can work, you know, work this out with the Debtor. I know there's other multiple suspended accounts as well, including some in

the six figures that I've spoken with.

THE COURT: All right. Thank you very much, Mr. Holcomb.

MR. HOLCOMB: Thank you, Your Honor.

THE COURT: Jin Kim?

MS. KIM: Good morning. Can you hear me?

THE COURT: Yes, I can.

MS. KIM: Yes, good morning, Your Honor. Thank you very much for giving me the opportunity to speak. So I am a Earn creditor, pro se, and I've been totally kind of should I just say confused through the lack of disclosure from Stretto and this whole litigation process.

The information that I have right now, I'm not really sure if it's accurate or not, is that through this proposed new agreement, if we do file and approve it, it's 70 percent to Earn creditors and I don't know what the distribution is going to be, in Bitcoin or liquid currency and how much it's going to be in the common stock and the statement that I got after that is that there's a 4.7 billion civil settlement with FTC and that you could only get that settlement if you drop any claims against Celsius.

So this is very confusing to me and then the valuation of bitcoin, which is mostly what I held, is it going to be based on the petition date when the bankruptcy went into proceeding or is it going to be on the date when,

you know, Celsius accepted the plan proposed, drafted from Newco?

THE COURT: So I think the disclosure statement, I'll give the Debtor and Committee a chance to respond to that. But I think the disclosure statement is clear that the valuation is as of the petition date and that's something that's required by Section 502 of the Bankruptcy Code. They didn't arbitrarily pick that date, but that I think is pretty -- that I'll give the chance, you know, when we get to the back to the responses. I read the disclosure statement as quite clear on this point.

MS. KIM: Okay. Thank you for that. I appreciate that.

THE COURT: All right. Thank you very much. Mr. Crews.

MR. CREWS: Thank you, Your Honor. With regards to CEL token, there's one aspect that the Debtors have not addressed. They currently have 658 million CEL tokens in their possession. They have not disclosed what they plan to do with those tokens. Will they burn them? Will they return them to the creditors that they owe them to? They owe approximately 195 million CEL liabilities to non-subordinated, non-insiders, and it would seem logical if there are people arguing that these are valuable tokens worth more than 20 cents or 25 cents, you could satisfy

those claims by simply returning these supposed assets to the people that claim they're very valuable --

THE COURT: I think that position --

MR. CREWS: -- actions --

THE COURT: Mr. Crews, I think -- and I'll give the Debtors -- you know, I want them to respond to this at the end, that without a going concern, the CEL token, it can't be issued. It can't -- you know, Celsius won't exist. Ultimately, the CEL token depended on the value of the Celsius enterprise. The Celsius enterprise as going concern won't exist whichever, whether there's a liquidation or the Fahrenheit or Brick transactions wind up as being approved.

There -- this is not like Bitcoin or Ethereum. I thought that was -- if I'm misunderstanding that, I'll give you a chance to respond to it, but also for the Debtor and the Committee to respond to that.

MR. CREWS: Yes, Your Honor. I agree that there is no discernible value to this token. It could still physically be returned into the control of people who believe it's somehow worth more.

THE COURT: What to manipulate the price --

MR. CREWS: -- rate of return --

THE COURT: -- when it doesn't have -- when there's no enterprise. It was the native token for Celsius as a business. It varied over time but it's not like, you

know, Bitcoin or Ethereum. If Celsius doesn't exist, how is it that the CEL token can be distributed and traded?

MR. CREWS: Well, it was distributed to custody holders. I agree that there could be regulatory concerns, given that there is no discernible value to this token, but it's actively trading today. And to the extent that people believe it has value, I think that they should be allowed to get it back rather than waste the Court's time with trying to determine an alternate valuation.

Although I do agree, there is a profound injustice to the people that were defrauded by this token, because its price has been manipulated from inception from the IPO. They didn't disclose they failed to sell two-thirds of the token, less than two --

THE COURT: That's all in the examiner's report. I'm very, very aware of what -- it's hearsay, what's in the examiner's report, but for this purpose, let's accept that as true. I understand that background.

MR. CREWS: Yes. And furthermore, in April of 2022, the top six insiders of the company sold $40 million worth of CEL tokens over the OTC counter which was fobbing off this worthless token to OTC CEL victims. So my issue with the 25 cent deal is not that CEL victims get some value back, because I believe that is warranted, but there is no value to this token. So I believe it would be better to

compensate victims based upon their pro rata, the amount that they're out, because there were people that bought CEL early. A lot of the movants who (indiscernible) bought CEL token at mere pennies on the dollar when it plummeted after its IPO, whereas victims of this OTC CEL, bought it at $5 when the founders of the company were selling, using that same OTC desk. So it's a very close nexus between victims who are buying this through the OTC CEL desk and the perpetrators who were selling it effectively to them via one step.

So these are people, there's a $40 million cost in that April of 2022 that came directly out of the OTC CEL victims, so it would be better if they got proportionally more of the recoveries rather than compensating people that bought it five cents equally to those that bought at $5.

THE COURT: All right. Thank you, Mr. Crews. Mr. Bronge.

MR. CREWS: Thank you, Your Honor.

MR. BRONGE: Yes, hello, Your Honor. Can you hear me?

THE COURT: Yes, I can. Go ahead.

MR. BRONGE: Yes. I'm Johan Bronge. I'm pro se creditor. I filed a motion and I might be a little bit wrong on the procedure, but in that motion, it's 3270 on the docket, I object to changes in the language in the

disclosure statement regarding the collateral and the loans for the borrowers. In the disclosure statement, the collateral has now been changed to be called retail borrower deposit claim and the loan is a retail borrower advance obligation.

I object to changing those definition because there is a collateral and it's same as it is for institutional loans. And I feel that this creates an artificial difference between those two groups which should not be there.

And the other point I want to make is regarding tokens. I certainly consider Bitcoin as different from all the other tokens as it is money and commodity as per your own definition in the Earn ruling. So those are my comments. Thank you.

THE COURT: Thank you very much, Mr. Bronge. Mr. Sabin. You're muted.

MR. SABIN: Your Honor, jeff Sabin on behalf of Ignat Tuganov at Venable. I'd like to speak in support very briefly, less than three-and-a-half minutes --

THE COURT: Go ahead.

MR. SABIN: -- raising several issues from filings last night and what you heard today. Mr. Tuganov, as you know, is a proposed class representative. We'll hear the settlement of the class action claim next, I believe. In

addition, he otherwise is a signatory and was a participant in the three-day mediation, but here are the four issues for today.

Last night's filing, late last night, there was a schedule of retained causes of action filed. I very much applaud and thank all of the people at the UCC, at the Debtors, and all other participants in the mediation. They have now identified various important claims including the (indiscernible), the Tether, the Rhodium, all under the schedule of retained causes of action, and those are important things for people who will be voting on a disclosure statement.

There are two that are not yet identified that we think are important enough and of course, it's not our disclosure statement, but I leave it to the Debtors and the Committee. The first are the filed two-plus billion dollar face amount of claims against FTX that Celsius has filed. And the second -- and whether that is a category of claim that will fit under retained causes of action. And the second is an unpaid loan, defaulted unpaid loan, of about $409 million of principal that was made by Celsius to EFH.

The second disclosure issue I'd like to raise is raised by Mr. Caceres who otherwise is now asking the Court as you heard today not to approve the 9019 class settlement until confirmation. For various reasons in our filing and

the UCC filings, I hope that this Court approves the disclosure statement, does not leave the class settlement hanging, and otherwise proceeds after we finish this discussion of the disclosure statement to consider the actual class settlement.

That class settlement, among other things, as set forth in the papers and reached in the mediation, does subordinate and the plan now contains the proposed settlement of the subordination of the CEL class, but it otherwise resolves any subordination, possible subordination of Earn rewards creditors or retail borrowers. That is part of the settlement.

Point number three, and it was raised by counsel to the securities claimants. I think there should be some clarity in connection with the disclosure statement and in connection with the ballot and the materials that will be given to voting and/or non-voting creditors as to whether they can and if they want to contribute claims -- forget as a matter of law -- but if they want to contribute claims, especially since there's been no certification of a class in the securities class action and there's been no certification of a class in Kaplan v. Mashinsky, et al. which includes an amended set of claims against Wintermute.

The last item is one that I applaud, the Debtor making so much progress with federal and state regulators

and with the plan sponsor, and so if there is information that is relevant -- because as you heard at the start, I think the most important thing in terms of the consideration by account holders and other creditors, is the fact that this plan could be confirmed and could go effective prior to year end. And therefore an update, if one exists as to the status of efforts to obtain SEC approval of a registration statement and to obtain an exemption letter contemplated as plan conditions to consummation of a '40 Act exemption no action letter would be relevant if they exist. Thank you, Your Honor.

THE COURT: Thank you very much. All right. Mr. Frishberg.

MR. FRISHBERG: Thank you, Your Honor. I will be very brief. I just want to reserve all my rights on releases, since I know the Second Circuit has a speak now or forever hold your silence precedent around, like reserving rights and appeals and that's it. That's it. Thank you very much.

THE COURT: Thank you very much, Mr. Frishberg. Mr. Kleiner, you've already been recognized. I'm not going to hear you on anything you've already talked about, and if you wanted to raise something else, why didn't you raise it before?

MR. KLEINER: I apologize, Your Honor. I just had

moved off the ADR procedures very quickly. There were just two minor housekeeping points that I wanted to mention before we went back to the Debtors. The added language to the disclosure statement, there's a FAQ related to ADR procedures. The introduction points out that these would apply to avoidance actions. I just thought it was worth noting that the first item of who may participate seems to have inadvertently left that off. I would just suggest that the Debtors take a look, since the intention is to include avoidance actions, they ought to mention that there as well.

And then the second, also minor housekeeping point. You had suggested that your hope that the Debtors work with the avoidance action litigants on crafting procedures before the confirmation hearing. I just wanted to request that we be included in that.

THE COURT: All right. All right, I've now recognized everyone who had raised their hand. Let's go back to the Debtors. Mr. Kleiner, remove your hand. Mr. Davis, you've already been recognized, please remove your hand. Okay. Who's going to speak for the Debtor?

MR. KOENIG: Good morning, again, Your Honor. Chris Koenig, Kirkland & Ellis, for the Debtors. I assume you can hear me again okay.

THE COURT: Yes, I can.

MR. KOENIG: Wonderful. All right, I will go

through my list and cover as many as I can. The first two objectors were talking about the ADR procedures. I think the colloquy that you had with those parties suggested that those are confirmation issues. We've, you know, begun preliminary conversations and as to Mr. Kleiner's most recent point, we're of course happy to continue to discuss with them ahead of confirmation, but nothing that they said suggested that the disclosure statement should not be approved. Whether the ADR procedures are appropriate or changes should be made, those are all changes that Your Honor to make at the confirmation hearing.

THE COURT: Let me just -- let's hold on a second, all right. Let me -- I want -- back to my notes. Okay. I had a lot of notes, so it's going to take me a minute to find what I'm looking for.

MR. KOENIG: No worries, Your Honor.

THE COURT: Okay. I think that the disclosure statement overstates what's likely to be included in any confirmed plan with respect to compulsory ADR. First, it's common for robust mandatory ADR procedures to be adopted by Court in large bankruptcy cases such as this one. That's really what I said to Mr. Kleiner already. And it's common to include limited ADR opt-out procedures to permit parties that object to compulsory mediation to be excluded from mandatory ADR, but this Court, while I've historically

provided such exclusions in rare cases, it's not -- and I've already said this.

I don't view that as denial of due process to require parties to engage in good faith, mandatory ADR, but what remedies the Court may impose for refusal of parties to participate in mandatory ADR in good faith is for the Court to decide based on the facts and circumstances of each case. So I would like the language -- because there will be a few other points I'm going to raise, Mr. Koenig.

I would like the language of the disclosure statement to be altered to remove any threats for disallowance of claims for failure to participate. You can certainly say that the Debtors will ask that the claims be disallowed, but the suggestion that the Court will assuredly grant that is, I think, incorrect. So I --

MR. KOENIG: Understood and agreed.

THE COURT: I would like that language softened a bit. Okay.

MR. KOENIG: Understood, Your Honor.

THE COURT: All right. But go ahead.

MR. KOENIG: Sure. I turn next to Mr. Behlmann and the securities law litigation. He had three remaining points, the preservation of claims against the Debtors. Look, if he has a sentence that he would like us to add that clarifies that their claims against the Debtors can be --

survive the plan and the confirmation and the emergence from bankruptcy solely for the effort of pursuing insurance, I have no objection to that and if he would like to send us that language, I'm happy to include it. Frankly, I think the plan already provides for it, but I'm more than happy to take that issue off the table.

THE COURT: All right. Mr. Behlmann, do that today, if you would, please. I think -- again, I think it's a very short statement. Mr. Koenig, if you can't agree on that language, contact chambers and we'll -- I'll set a hearing just on that issue with maybe a couple others, we'll see, but we ought -- that really is just a disclosure issue and I understand both sides. I think you ought to be able to work that out. Okay?

MR. KOENIG: Yes, Your Honor. I'm sure we'll be able to do that. On his second issue, the confirmation won't alter parties' rights under the D&O coverage. I checked while everybody else was speaking and we amended the plan to say exactly that, frankly, in response to Mr. Behlmann's objection. Page 153 of the PDF of the redline of the plan adds some language in that respect that says, "provided that the litigation administrators, management of the D&O liability insurance policies do not affect the rights of, one, entities covered by the D&O liability insurance policies to pursue coverage under such policies;

or two, entities eligible to recover from the D&O liability insurance policies to pursue recovery from such policies and all such entities' respective rights and priorities are undisturbed by this plan."

I don't know if that resolves Mr. Behlmann's issue. I know that he had asked --

THE COURT: Mr. Behlmann, does that take care of your issue on that point?

MR. BEHLMANN: It does, Your Honor.

THE COURT: Okay.

MR. KOENIG: Wonderful. And then on the --

THE COURT: Go ahead.

MR. KOENIG: Thank you. His third point was about the assignability of the securities law claims. We added some language to the plan, the disclosure statement, the ballots that made clear that those claims will only be assigned to the extent that assignment is permitted under applicable law. We don't have to reach the issue today --

THE COURT: That's fine. I'm satisfied with that language. Go ahead.

MR. KOENIG: Okay. I believe that that resolved Mr. Behlmann's -- I believe that resolves Mr. Behlmann's issues. I'll turn next to the, the lawyer for Mr. Kieser who raised a couple of issues with respect to loans and subordination of the Earn claims. I don't believe that any

of this is an issue for the disclosure statement today. It's a confirmation issue. Mr. Kieser's attorney is arguing that all of the Earn claims should be subordinated to his client's claims. Not an issue for today, but just very briefly, I think it's a very convenient argument to make that, you know, almost $5 billion of other claims should be subordinated to just my claims.

I'd also point out that just because -- even if Earn is a security, I'm not saying it is, but even if it were, that doesn't mean that Earn should be subordinated pursuant to Section 510(b). There are other words in Section 510(b) that are important. It has to be arising from the purchase or sale of a security.

There are a variety of securities of the Debtor that can be issued in any case. Bonds, indentures provide for the issuance of debt securities of the Debtor. That does not mean that the bond debt claims are subordinated in every bankruptcy. If there are claims arising from the purchase or sale of those bonds, for example, fraud or misrepresentation associated with their sale, those claims can be subordinated pursuant to Section 510(b).

That's the distinction, but again, not for today. That's an issue --

THE COURT: All right. Next.

MR. KOENIG: -- for confirmation. Unliquidated

loans, I think Mr. Kieser's attorney said that there was more disclosure that was needed, but I think he clearly understands it because the argument that he presented in Court was if -- as if he was reading directly from the disclosure statement. So I think that we're already resolved there.

He also argued that executory contracts, the loan should be treated as executory contracts. The plan was amended to provide that to the extent the loans, the retail loans are executory contracts, they will be deemed rejected. That is exactly the same language that we have for institutional loans except it's, if they are executory, they are deemed assumed. We're not arguing that they are or they aren't, but if they are, it's just sort of a savings clause, Your Honor, and the plan --

THE COURT: Okay. Next.

MR. KOENIG: Mr. Ubierna, I think he said that he only had one issue that remained on disclosure, which was he wanted some more detail on mining. Respectfully to Mr. Ubierna, we have a ton of disclosure about mining. It is the most important asset of the Newco. There are pages and pages and pages of projections and disclosure and Q&A's and all of the rest of it. We added as many things as we could to the disclosure statement as a result of his objection, which we thought was very good and coherent as it always is.

But we respectfully submit that the disclosure statement has adequately addressed his disclosure objection.

THE COURT: Okay.

MR. KOENIG: I'll take the CEL token claims just sort of as a group. First of all, all of the objectors are pointing to Ripple as a decision that is somehow precedential or binding on this Court. It is not, as I'm sure Your Honor knows. First of all, that decision is very complicated and suggests that that the XRP token is a security in certain circumstances and not a security in other circumstances.

But even putting that decision -- we need to put that decision to the side for a moment because what all the objectors didn't mention is that Judge Rakoff ruled exactly to the contrary in the Terraform Labs decision and found that there the token was a security in all circumstances.

Again, these aren't issues for today, but just needed to point that out since all of the objectors seem to be relying on the Ripple decision as somehow binding on this Court. It is not. It is an issue for confirmation, but what we and the Committee are trying to do here is we've proposed a settlement of all of the issues relating to CEL token. There are people that think it should be zero. There are people that could -- that think it should be 81 cents. I heard several objectors arguing that it should

actually be more than 81 cents. There are arguments that it should be subordinated pursuant to Section 510(b) or otherwise. What the plan does is offer a comprehensive settlement of all of those issues and value the token at 25 cents instead of what would otherwise be very long and contentious litigation over the price of the CEL token, but again, that's an issue for confirmation.

THE COURT: Mr. Koenig, let me ask you now, because it seemed to me that additional discussion should be added to the disclosure statement about the recent New York Supreme Court decision denying Mr. Mashinsky's motion to dismiss the New York Attorney General's case. That case is State of New York v. Mashinsky, Index No. 45004/23. It's a decision by Judge Margaret Chan denying Mashinsky's motion.

It's an interesting decision. I think it's a very lengthy and well-reasoned decision. Again, it's not binding on this Court and she rejected Mr. Mashinsky's argument relating to whether Celsius was a necessary party. But it seems to me -- I don't intend -- I don't know that it's going to require an extremely lengthy decision. So Ripple clearly is not binding or -- on Celsius.

And while Judge Chan's Mashinsky decision is not binding on Celsius, either, it relates specifically to alleged facts relating to Celsius. Judge Rakoff's decision clearly is not binding on Celsius. These are complicated

issues. Judge Chan's rulings are not the last word. I assume there'll be an appeal from what she ruled. But I believe she -- with respect to the CEL token, I think she said it's a commodity but it would still be governed by the -- it would still be subject to the Martin Act, the State Martin Act.

So in addition to whatever federal securities claims may exist, there could well be claims under state securities law as well. So I think some brief discussion needs to be added to the disclosure statement about Judge Chan's decision because it relates specifically to Celsius, although it's not binding on Celsius.

MR. KOENIG: Yes, Your Honor. I think it -- we included that description in the most recent version of the disclosure statement. I'm looking at Page 248 and 249 of the disclosure statement that refers to that --

THE COURT: I must've missed --

MR. KOENIG: -- litigation specifically.

THE COURT: I must've missed it.

MR. KOENIG: No problem, Your Honor. It's a lengthy document. We include it right after the description of the Ripple and the Terraform litigation.

THE COURT: What are the pages again, 248, 249?

MR. KOENIG: 248 and 249 and -- certainly take another look at them. And if there's some additional

comments, we will certainly --

THE COURT: I will again. If it's there, I missed that. And so it may well be adequate. But it is something that, unlike Ripple and Terraform, this does relate to Celsius.

MR. KOENIG: Understood, Your Honor.

THE COURT: Landing on the Debtor here.

MR. KOENIG: Understood. It's a long paragraph, but we're of course happy to provide more disclosure if Your Honor --

THE COURT: Okay. And I will confess that I missed that paragraph.

MR. KOENIG: As I said, it's a lengthy document. I certainly understand.

THE COURT: Yeah. So let me -- actually, let me raise this issue right now, because it is a lengthy document, and it needs to be a lengthy document. I'm not critical about that at all. But it seemed to me right up front there needs to be a clear statement of balloting deadline. Because I didn't find it until way back in the disclosure statement. I think, you know, whether every creditor is going to read the disclosure statement in its entirety or not, I wouldn't want to count on that. Many will. But I think that while the ballot will show that, the disclosure statement ought to say, probably in bold language

right up front a statement to the effect that -- you know, with clear directions about the deadline for returning ballots. You also included about some of the resources that might be available if people have questions. I think some brief reference to that as well so that even if people aren't going to read the whole disclosure statement, they'll know right upfront I've got to return a ballot by such-and-such date.

MR. KOENIG: Certainly, Your Honor. Why don't we do this? We have a page -- it is Page 10 that has a lot of these details. Why don't we -- the box that's at the top of the disclosure statement right now says something like the disclosure statement is being submitted for approval but hasn't been approved. We can replace that with the voting deadline is, you know, such-and-such a date. Please see Page 10 for more information and resources, something like that.

THE COURT: Okay. So I have a question for you. Well, go ahead and finish covering the other comments you have on the other objections that were made. And then I may have a couple other thoughts.

MR. KOENIG: Certainly. All right. So I'll just cover a couple of others, and I'll try to be brief.

One of the pro se creditors, I think it was Mr. (indiscernible), suggested that we just return the call

token. That's not --

THE COURT: That's not going to happen.

MR. KOENIG: I assume Ms. Scheuer's comments would be much more lengthy this morning if we were suggesting that we would do that.

THE COURT: That isn't going to happen.

MR. KOENIG: Okay. And on the counsel for the Ad Hoc Group for Cell Token, that's not before the Court today. That's on September the 7th. You know, they can of course engage their own counsel as all the other ad hoc groups have done. We will continue to engage with them whether they are represented by counsel or not and see if we can reach consensus. If not, you know, we'll deal with that at confirmation.

Ms. Giugliano appearing for the two entities affiliated with Mr. Mashinsky, I think equitable subordination is for confirmation. We provided additional disclosure about why we're proposing to subordinate her clients' claims. I understand that she doesn't want there to be rulings that could affect her client in other circumstances. We would be more than happy to enter into some sort of a stipulation that subordinates its claims but doesn't include any rulings, findings of fact, or conclusions of law. Happy to take that offline. But we're not going to do a significant pullback of distributions for

Alex Mashinsky because, you know, he would prefer for those -- that litigation to wait until his criminal trials are over. We need to move forward now and make distributions to our creditors.

THE COURT: All right. Next?

MR. KOENIG: Just flipping through. I think that mostly covers it. I think that mostly covers it. I think Your Honor covered the other objections or, you know, they are not objections to the disclosure statement itself and should be reserved for confirmation. But I'm happy to take whatever comments or questions you have.

THE COURT: I do have some other questions. So assuming that the Court approves part of the plan, the cell token settlement, the 25 cents, can the cell token holders opt out of that settlement?

MR. KOENIG: Not the way that it's currently described, Your Honor. It would be a settlement of all issues relating to cell token, a 9019.

THE COURT: I mean, ordinarily settlements are consensual. How is it -- what's the basis for binding any of the cell token holders who object to that settlement?

MR. KOENIG: I think if they object to the settlement, we're going to have to make a showing that it's fair, reasonable, appropriate, before we --

THE COURT: Well, you're going to have to make

that showing anyways.

MR. KOENIG: Right, sure. And hopefully there will be enough cell token holders that vote for the plan and for the settlement that we can point to that as the consent. You know, in a case this large, of course you would never get -- you would never have each and every holder consenting to a settlement. Right? And so I think what we would do is we will look at the ballots and the returns and use that as some sense of -- we can of course track who votes and what they're holding. And I think that we're going to have to look at the cell token returns and say, okay, you know, hopefully a majority of cell token holders, or a significant number of cell token holders accept the plan, vote to accept the plan. That's what a plan is, it's a settlement.

THE COURT: All right. Let me see if I have a few other -- I do have a question. And maybe you've posted -- I think I raised this at a prior hearing. You've entered into a resolution with the DOJ, the SEC, the CFTC, and the FTC. But it wasn't -- whatever that document was, it wasn't public the last time I asked about it. Is it public now?

MR. KOENIG: It is public now. I thought we had filed that on the docket. If we haven't, we will certainly file it later today just to point everybody in the right direction.

THE COURT: Mr. Koenig, can you tell me the ECF

number? Look, I've been reviewing an enormous amount of material.

MR. KOENIG: Understood. Let me check and come right back to you on that, Your Honor.

THE COURT: Let me ask a question. Does that settlement have any effect on the treatment of claims in the plan? Does it -- for example, does it preclude the Debtor from arguing that the earn accounts are securities or that whether or not cell tokens are securities?

MR. KOENIG: For purposes of plan confirmation, whether we could argue that?

THE COURT: Yes. Yeah. I want -- in other words, I don't -- yeah, specifically that. Has the Debtor been precluded by virtue of the terms of settlement from arguing one way or the other whether earn accounts, cell tokens are securities?

MR. KOENIG: I don't believe that in the context of plan confirmation we would be precluded from arguing that, but let me -- I need to go back and read the resolution in a little more detail to give you a firm answer on that. I don't believe so in the context of plan confirmation. Certainly in the context of any litigation between Celsius and the government we may well be precluded from making that argument.

THE COURT: So I think the disclosure statement

needs to state in clear terms whether or not Celsius is precluded from arguing whether earn accounts and/or cell tokens are or are not securities and if you are precluded, for what purposes.

MR. KOENIG: Understood. We will do so.

MR. COLODNY: Your Honor, Aaron Colodny from White & Case on behalf of the Official Committee of Unsecured Creditors. I would just rise to note that even if the Debtors have admitted it, the Committee has not and is not a party to those discussions, and we reserve all rights with respect to that.

THE COURT: You know, for now I just want to know -- something in the disclosure statement whether -- first, I haven't seen the terms of the settlement. And second, assuming they're public, which they should be, what effect if any does that settlement have on any positions that the Debtor may take with respect to confirmation. Okay, let me see.

I think that -- well, let me ask you. I may have missed it if it's in there, and you'll tell me if it is. But there was at least one additional risk factor that I thought should be added. I showed it at Page 293 of the amended disclosure statement. And it would be -- this is what the -- and I think you've got 30 subparagraphs in there. It ends on Page 293. I had this as Paragraph 31.

"The mining business may face significant counterparty risks, threatening its ability to operate profitably." And then the text -- that would be italicized. And then below that, "The Debtor's recent experience has demonstrated that the mining business may face important counterparty risks ranging from counterparties' breach of important agreements, counterparties' failure to perform in accordance with contractual agreements, or counterparty insolvency. The crypto markets are highly volatile with many important participants ceasing to operate, becoming targets of regulatory enforcement actions, or filing insolvency proceedings in the United States or elsewhere. This could seriously impact Newco's profitability."

And let me see. The quote continues in the next paragraph. "The mining business also faces the risk of significant losses if a counterparty with whom Newco stakes Ether (ETH) fails for whatever reason to return Ether (ETH) as contractually required."

I wrote that language down because that's -- you know, you're in an adversary proceeding with stake count with specifically that risk where they have failed to return (ETH) that was staked. And I didn't see -- if I missed it, you'll tell me. But I didn't see that additional risk factor added to a discussion of the mining business.

MR. KOENIG: Understood, Your Honor. We will

draft that new risk factor. If it exists elsewhere, we will supplement it accordingly.

THE COURT: Let me look down my list and see whether I had anything else, Mr. Koenig.

So I think -- this is a separate point. I think the disclosure statement did not identify by name the insiders who would not receive releases. I think this was -- I'm going to refer to a page number, but -- well, I'm not going to refer to a page number. It may have moved. I think you said it was going to be in the plan supplement.

MR. KOENIG: Yes, Your Honor. That was actually one of the documents that was filed overnight. And those lists will be attached to the ballots of non-released parties. That was one of the things that we were working on with the committee up until the hearing. So we're happy to include a cross-reference in the disclosure statement or list them out in the disclosure statement, but we did file the first version of that list last night, and we intend to attach them to the ballots.

THE COURT: Okay.

MR. KOENIG: I think that's Docket Number 3723. I'm sorry, 3273. I transposed the numbers.

THE COURT: I think you ought to cross-reference it. I don't think you have to repeat it, but just cross-reference it.

MR. KOENIG: Will do.

THE COURT: Does the disclosure statement explain the allegations in the DOJ criminal case, the SEC, CFTC, and FTC complaints? I know you reference them, but do you summarize the allegations?

MR. KOENIG: I believe so, Your Honor. We will look back at it. But I recall those sections being pretty robust.

THE COURT: Okay. Sorry for the delay. I've got notes I'm going through.

That's all that I have on my list. Mr. Colodny, do you have anything you want to add?

MR. COLODNY: No, Your Honor, I do not. I think that Ms. Kim's colloquy where she had important facts I think really underscores the purpose of this disclosure statement and how it works. You know, she asked three pointed questions that are important to all accountholders. If accountholders go to the table of contents, it's easy to find answers to all of them. This was designed by Mr. Koenig and his team to be an easy-to-read document for the purpose of providing Ms. Kim with information. I thought that was pretty instructive to the hearing today.

THE COURT: All right. What I'm going to do then is I'm going to conditionally approve the disclosure statement. I want to see these last changes. Put them in a

blackline copy against the last version so that I can look at those easily. If I'm satisfied with that language, I'm going to conditionally approve the disclosure statement.

I think that -- and I appreciate that Ms. Cornell, Ms. Cornell, Ms. Cordry, Ms. Milligan, and Ms. Scheuer frankly have made my life easier for today by agreeing that the issues that the regulators have raised and reserved and have worked -- and I really do appreciate the fact that the Debtors have tried very hard to work out with the regulators, because I've said over and over I think that, you know, their agreement is very important to making this plan a success. Assuming that it receives the votes of creditors and we go forward with confirmation, I can deal with the confirmation issues at that time.

So I think that since they've reserved those objections, they don't have to be ruled on at the time of the disclosure statement. So I won't hear arguments or anything more about it and won't enter any rulings with respect to those objections, because I really do think they were confirmation objections.

Let me just go through my notes and make sure.

So you'll work today I assume in trying to get Mr. (indiscernible) a sentence or two that's going to go in the disclosure statement that will resolve his issues.

MR. KOENIG: Yes, Your Honor.

THE COURT: Let me ask you this question. And just really to the Debtor and the Committee. So your position is that if I approve this settlement to value the cell tokens at 25 cents that none of the cell token holders will have the right to a hearing on valuation of the cell tokens as of the petition date?

MR. KOENIG: What I would say, Your Honor -- and Mr. Colodny will obviously have his own view -- is that if the -- they'll have every right to object to the settlement. If the settlement is approved, I don't think that they're going to have a separate right to opt out and seek their own separate hearing. That's our position.

THE COURT: Mr. Colodny?

MR. COLODNY: That's right, Your Honor. I think the settlement is a good-faith effort to resolve a number of complex issues regarding cell tokens, including subordination, valuation, rank. I could continue. And we would propose that it meets the realm of reasonableness under Rule 9019. And, importantly, it doesn't affect just cell token holders, it affects all Earn creditors. Because as you pointed out, we cannot give cell token back. And so anything that is sent to cell token holders detracts from the entire (indiscernible) recovery.

So the way the plan is designed is cell token holders are valued at the settlement amount and then they

receive the treatment according to the class in which they held their account if it's a deposit claim. And all Earn creditors, all borrow creditors, all custody holders will get to approve or reject that settlement as part of the approval/rejection process of the plan. And we intend to move forward with that settlement under the Rule 9019 to the extent Your Honor believes that's the acceptable standard (indiscernible).

THE COURT: All right. Now let me ask -- I see hands raised, but I'm not going to recognize you. We've -- I've covered all of the -- given everybody a chance to speak to whatever objections they have.

Let me ask a separate question. I didn't see any separate objections to the form of the ballot or the solicitation materials. Does anybody wish to raise an objection to the form of the ballot or the solicitation materials which are also on for approval by the Court?

Mr. Davis, are you objecting to the form of the ballot or the solicitation materials?

MR. DAVIS: I'm sorry, Judge. No, I'm not.

THE COURT: Okay.

MR. DAVIS: I wanted to add something to what you just said regarding the settlement. Where --

THE COURT: I don't want -- I'm sorry, Mr. Davis. I don't want to hear anything about any of the subjects I've

already heard about. My question is specifically whether anybody --

MR. DAVIS: No, Judge.

THE COURT: Okay. All right. Is there anybody who wants to be heard with respect to the form of the ballot or the solicitation materials? All right.

So I'm approving the form of the ballot and the solicitation materials as well. Obviously the Debtor has agreed to include something right up front in the disclosure statement about the deadline, et cetera. That's fine.

So I am, subject to reviewing the blackline changes that are going to be made after today's hearing, I am approving the disclosure statement, ballot, and solicitation materials. To the extent that I've not specifically addressed or ruled on any remaining disclosure statement objections that were made today, they're overruled.

To be clear, this does not preclude parties-in-interest to raise issues other than the adequacy of the disclosure statement, form of ballot, or solicitation materials in connection with plan confirmation. All of those rights are reserved.

All right. What's next on the agenda, Mr. Koenig?

MR. KOENIG: Thank you, Your Honor. Before we move on, I would be remiss if I didn't point out Mr. Colodny

mentioned that it was me and my team. It was not me and my team. It was -- Elizabeth Jones, my colleague, was the architect of the disclosure statement. It is her document, not my document. I'm the one that gets to take the credit for it, but it's her and her team. Because it was obviously a cast of thousands that worked on that document. And I would be remiss if I didn't give her the credit for it. She was supposed to present our case-in-chief, and for time's sake, we pivoted a little bit. But she would have done a better job than I did this morning, Your Honor.

THE COURT: I appreciate you singling her out for credit. I appreciate it. Look, there was an enormous amount of work that went into this disclosure statement and the changes that were made to it along the way to accommodate objections. And I've already said I appreciate the agreement of the regulators, federal and state, with respect to those things that may be reserved. Hopefully the Debtors, the Committee, and those regulators will be able to continue their dialogue and if possible avoid any confirmation issues that may still exist. So I appreciate all -- look, this is a big case.

It's -- excuse me just a second. Sorry about that.

You know, an enormous amount of effort went into getting us to this point. And I appreciate that. And

there's still a lot of work that remains to be done.

All right. So are we ready to move on on the agenda?

MR. KOENIG: We are, Your Honor. Next up is the Class Claims Settlement Motion. This is one of the major issues that's remained in these Chapter 11 cases, the claims reconciliation process.

Now that the disclosure statement has been conditionally approved, we're hoping to have a confirmation hearing commencing in early October. And if the Court confirms the plan, we're hoping for the effective date to take place by the end of the year so that distributions can commence in 2023. But in order for those distributions to be made without significant holdbacks or reserves, most of the account holder proofs of claim will have to be resolved. And there are approximately 31,500 proofs of claim that have been filed by accountholders to date. So resolving these claims is a critical hurdle to the Debtor's ultimate goal of commencing distributions to creditors this year.

The Debtors have explored several different strategies in these Chapter 11 cases to try to resolve claims, but all of them were imperfect. Most notably, we tried the bellwether claims process. We objected to several accountholder claims with the goal of obtaining rulings that we could try to apply to other accountholder claims. But

that process was delayed by the Series B ruling. And, frankly, if we were to pursue that to its conclusion, that process would have ultimately led to the expenditure of significant estate resources.

But the Committee filed its class proof of claim motion on behalf of all accountholders seeking a recovery against each debtor entity on account of claims for fraud, misrepresentation, and other non-contractual claims. And as part of mediation, we discussed and negotiated that issue.

The Debtor's position throughout these cases has been that accountholders do not have any claims against the Debtors above and beyond their claim for the return of their cryptocurrency in their Celsius accounts. That is, the Debtor's position is account holders' damages are limited to the value of the cryptocurrency in their account. But the Committee and various accountholders have argued that they are entitled to more than that, they are entitled to a claim that is higher (indiscernible) cryptocurrency in their account.

Given the importance of this issue to the claims reconciliation process, the Debtors were willing to negotiate a settlement of this issue, so we entered into the Class Claim Settlement. This settlement provides every accountholder with a five percent increase to their claims other than custody claims on account of this argument,

noncontractual claims such as fraud or misrepresentation. Each accountholder will receive notice and the opportunity to opt out of the settlement as part of balloting. If they do not opt out, they are bound by the settlement and any related proof of claim they filed will be deemed amended, superseded, and expunged by this new settlement claim. That is if an accountholder does not opt out, they will not be able to pursue their separate proof of claim, but they will receive this five percent increase to their claims and they will be eligible for the initial distribution that will commence on or around the effective date.

And of course every account holder has the right to opt out of the settlement and take their chances with the proof of claim litigation process. They can present their case that they are entitled to a claim for more than just the crypto in their account. But any accountholder who does that is not going to receive a distribution on the effective date because they will have a disputed claim. They will have to prove up their claim post-emergence as part of the claims reconciliation process and obtain a ruling of the Court. And the bar for proving fraud and misrepresentation is quite high. That is why we've entered into the settlement, to speed distributions to creditors, to have an easy way to resolve this issue while allowing people the right to opt out if they don't agree with the settlement and

if they want to argue for something that is higher or better than the settlement.

The way that the opt-out process will work is part of solicitation. If any accountholder wants to opt out of the settlement, there is a checkbox right on the ballot. Accountholders will have until the voting deadline to opt out of the settlement. Accountholders that do not opt out will be bound by the settlement. They will receive the five percent increase of their claim, but they will have the related proofs of claim expunged.

Accountholders that do opt out will retain all of their rights to argue their proofs of claim in full, but they will not receive the five percent increase and they will likely face an objection from the litigation administrator post-emergence and they will have to prove up their claim.

The settlement is supported by the Committee and Mr. Tuganov also filed a pleading in support of the settlement motion. The settlement motion was included as part of the mediated three-day settlement with Judge Wiles, and so the Earn, Ad Hoc Group, and Borrow Ad Hoc Group also support it.

We think that this motion officially resolves disputed and costly claims reconciliation litigation while allowing any affected accountholder to opt out, and we

believe it should be approved. The only objection that was filed was an objection by Mr. Caseres. His objection was effectively a carbon copy of his objection to the disclosure statement. He argued various issues relating to cell token.

The issues relating to cell token are not really before the Court today as part of this settlement. The holders of cell token will receive the same five percent increase to their cell token claims as other creditors. The issue of how to value the cell token is not being resolved this motion, but instead through the Chapter 11 plan.

Mr. Caseres clearly has strong views on cell token, which is understandable. But this settlement does not resolve cell token claims under the plan, which is for another day.

Your Honor, that concludes my remarks, and I'm happy to pass the lectern to whoever else would like to speak.

THE COURT: Mr. Colodny, do you want to be heard?

MR. COLODNY: Yes please, Your Honor. Aaron Colodny from White & Case on behalf of the Official Committee of Unsecured Creditors. I feel like I'm always batting behind Mr. Koenig here, so I'll try to avoid duplications.

But, you know, I want to go back to why we filed the class claim in the first place. And that was because of

hundreds of thousands of individual accountholders bringing claims for fraud, misrepresentation, and other non-contract claims, it was just not going to happen, and it wasn't going to work. And I think at our hearing on the motion to approve the filing of the class claim, that was made clear by Your Honor.

I think that the settlement, it furthers that goal and it makes it clear that we're not going to privilege the few over the many here. Specifically, it provides all accountholders with the increased claim and make sure that those that can't afford lawyers to bring complicated fraud claims against the Debtors won't be disadvantaged to those that can afford to pay for counsel, those that can afford to wait for distributions, and those that might get more because of a holdup value because of that.

It also streamlines the claims reconciliation process, which I know Mr. Koenig focused on. It's going to dramatically lower the holdbacks here, which could be massive due to the incredible size of the claims filed against the Debtors. And it also will decrease the cost that would have to be spent adjudicating those claims administration. But that's not to say that we are taking claims away from people. Everybody gets a chance to opt out.

And I went through the ballot last night, and I

wanted to flag it for Your Honor. But at Docket Number 3224, and it's Exhibit 3A, 271 at the top of the page. At the beginning of the ballot, we put an important note regarding the class claims settlement which details the settlement and the consequences for not opting out. So although the election is a bit further down in the ballot, I believe that that item eight right at the top, as you said, with respect to the disclosure statement, we put the most important thing, which is if you want to take action, you have to do it on this ballot.

Your Honor, I don't want to belabor the point, but one of the things that the settlement also does is it resolves claims on account of subordination of settling claims. And the way that it does that is an agreement that was reached at the mediation between the Earn and Borrow groups, and it does it by --

THE COURT: You've cut out, Mr. Colodny. My screen shows connecting to audio. Your audio was obviously interrupted. But let's wait for it to reconnect.

Just raise your hand if you can hear me, Mr. Colodny.

CLERK: He is connected, Judge, I think. Mr. Colodny?

MR. COLODNY: Can you hear me, Your Honor?

THE COURT: Okay, you're unmuted. Go ahead.

MR. COLODNY: You either hit the end of the Zoom or my conference dial-in. So I apologize, Your Honor.

THE COURT: I didn't hit the end of the Zoom, trust me.

MR. COLODNY: The point I was making was we reached an agreement at the settlement that resolves the subordination issue with respect to settled claims. And the way that it does that is it applies the five percent to the entire Borrow claim and the entire Earn claim. And if you think about the Borrow claim as a partially-secured claim by right of setoff and an unsecured claim, that excess unsecured claim gets an additional boost because it is applied while the secured part is kept constant. And that was a mediated solution that was reached before Judge Wiles that squarely resolves these issues so that we can move forward with the plan and confirmation process. And I think that that's critical to the settlement, critical to the implementation of the plan, and critical to moving these cases forward to the conclusion.

So with that, Your Honor, unless you have any other questions, the Committee strongly supports the settlement as a way to efficiently resolve these (indiscernible) and get money back to creditors.

THE COURT: Thank you very much, Mr. Colodny.

Mr. Caceres, you filed an objection. I would be

happy to hear from you now.

MR. CACERES: Thank you, Your Honor. Santos Caceres, pro se again.

I am aware I brought a knife to a gunfight. And as I said before, only one member of the UCC has a cell token claim that is worth fighting for. All of the members of the UCC will get a larger recovery as the Loans and Earn settlement is currently written. The closed-door negotiations between Loans and Earn completely disregarding non-insider cell token claims. Neither I nor the multiple people that wrote letters to the judge today were invited to those discussions. Therefore, I object to the settlement.

THE COURT: All right. Anybody else wish to be heard?

Mr. Adler?

MR. ADLER: Good morning. Good afternoon, Your Honor. It's David Adler from McCarter English on behalf of the Retail Ad Hoc Group. Can you hear me?

THE COURT: I can. Go ahead.

MR. ADLER: The only thing I would say, Your Honor, is obviously this was all, as Mr. Colodny said, this was negotiated during the three-day mediation that took place July 17th, July 19th. But it's a package, the term sheet. And I do have some concerns over splitting off one part of the term sheet from the rest of it. And given the

cell people's concerns, what I would respectfully recommend perhaps is because we are dealing with a class claim is that the Court preliminarily approve the settlement subject to final approval at the confirmation hearing.

That's my only comment, Your Honor. Do you have any questions?

THE COURT: Well, the thing that strikes me as contrary to your argument is that it's an opt-out settlement. And so I don't see any reason why I shouldn't approve it. It reserves the right of any creditors to opt out. This is not forever barring them from going forward. If they really think that they can go ahead and prevail on separate claims, opt out. It's a herculean task, but it's not impossible.

MR. ADLER: Okay, Your Honor. I just wanted to make that clear for the record, that from our perspective this was one single term sheet and it's being split. And with that I will --

THE COURT: Well, it's not being split because it contemplated an opt out. And that's what they're being given.

MR. ADLER: Okay. Thank you, Your Honor.

THE COURT: Thank you. Mr. Sabin?

MR. SABIN: Your Honor, I speak in support. We filed our papers for Mr. Tuganov. I'm only going to raise

three points and then respond to Mr. Adler.

First and foremost, the five percent increase against all debtors is to the scheduled amount. The importance of that of course is that there is no need if this Court were to approve this settlement now for another modification and opening up of a bar date. The opt out procedure applies to those who already filed claims as otherwise set forth by Mr. Koenig and Mr. Colodny. Very important point.

Point number two. I do not believe that there was any misunderstanding amongst the mediated parties without talking about any confidential information that contemplated this settlement going forward independently and going forward almost immediately. If my memory is right on the docket, it was filed within 24 hours after execution of the term sheet.

Point number three. The resolution of the 510(b) issue I believe does not need to await for confirmation and I believe can be approved under a 9019 standard. There does not have to be a separate motion to subordinate, an adversary proceeding to subordinate. I think the notice was sufficient in the motion, et cetera.

I also want to point out that although the filed class proof of claim and although the settlement otherwise shows the five percent increase, it is against each and

every debtor. And the subcon that's now contemplated in the amended plan of some of those debtors is independent of this resolution that's proposed.

For all of those reasons and for the reasons articulated by Mr. Koenig and Mr. Colodny, we strongly urge this Court to approve finally this settlement now. Thank you, Your Honor.

THE COURT: Thank you. Mr. Davis?

MR. DAVIS: Judge, I just had something to add Santos Caceres' statement if that's okay. If not, I won't add it.

THE COURT: Go ahead.

MR. DAVIS: Judge, as a point of reference about why the Court should approve a cell token valuation hearing, the Debtors themselves have filed a $2 billion claim in the FTX bankruptcy claiming that cell token was manipulated down from $3 to 20 cents. That is a reason why we should have a valuation hearing. That's all I have to say. Thank you very much.

THE COURT: Thank you.

Mr. (indiscernible)?

UNIDENTIFIED SPEAKER: Yes, Your Honor. I'm glad that we addressed that we won't be distributing the cell tokens. However, the Debtors still have not addressed what their plans are. They still have 658 million of these

tokens. So for the sake of clarity, it would be helpful if they state whether they plan to either auction them off or to burn them. Thank you.

THE COURT: Thank you. Mr. Koenig, can you answer that question?

MR. KOENIG: Again, Chris Koenig, Kirkland & Ellis, for Celsius. We are still evaluating what to do with the cell token. We've been in discussions with various parties, but we don't have a resolution. I understand the question for sure. And whenever we have a resolution, we will certainly make a statement publicly. But we haven't come to that conclusion quite yet.

THE COURT: Do the parties include the regulators?

MR. KOENIG: They certainly will if we propose anything that includes a sale or transfer or otherwise.

THE COURT: All right. Anybody else wish to be heard with respect to the 9019 motion to approve the Class Claim Settlement Motion?

All right. The motion is approved. I've already said previously that I greatly appreciate the efforts of my colleague, Judge Wiles, in connection with the mediation. You know, with the best settlements, I think it leaves everyone slightly unhappy but on the whole believe that they've reached the best resolution possible. And I think that this does that.

And because it includes the opt-out feature which is prominently disclosed in the ballot, I think that approving it today is appropriate rather than awaiting confirmation. No one's rights will be impacted by my approving it today. People will still have the opportunity to opt out if they think that's what's in their best interest.

So submit the order. And I'm approving the settlement and overruling the objection that's been made. All right.

MR. KOENIG: Thank you, Judge. We will do so.

THE COURT: Mr. Koenig, anything else for this morning? I know we have something at 2:00.

MR. KOENIG: The only other item on the agenda, Your Honor, was the stipulation that we entered into with the FTC. We had filed a stipulation, the Committee filed a limited objection, and we filed a joint reply, the Debtors and the FTC. That was the only other matter.

THE COURT: Mr. Colodny, do you want to be heard on that?

MR. COLODNY: Yes, please, Your Honor. This is Aaron Colodny from White & Case on behalf of the Official Committee of Unsecured Creditors.

We filed a limited objection at Docket 3136. And based off of the FTC's response, I think that the Committee,

the Debtors, and we all agree on a couple of points. The first I think was the last sentence in their section which said that they believe that they are focused on maximizing the returns to consumer creditors through the bankruptcy process. You know, I think that's been the kind of drumbeat of these entire cases.

What we sought clarification on was -- I'll take them in reverse order. But first, that the Debtors wouldn't have to establish reserves. And I believe that the FTC has unqualifiedly agreed to that in their response, and I don't believe that any further clarification is needed on that point based off of their statement on the record.

The second point I am a bit I guess hesitant to raise, but I think we need to do it now. And the point being does this judgment travel to Newco. And what the FTC said in their response was the people that it is targeted at are very clear. It's the corporate defendants, which are a number of Celsius-listed entities. And then there's two words at the end of that, successors and assigns, which are the two words that give me quite a bit of pause. And the FTC says, you know, we said what we meant and we can't opine on what that means today. And that's true. But the plan also is on file before Your Honor. You approved the disclosure statement, and it's going go to out for a vote. And the plan at Article 4(d)(1) clearly states that all

Newco assets shall be transferred to invest in Newco free and clear of all liens, claims, interest charges, and other encumbrances. It also says that Newco shall not assume or be deemed to have assumed or be liable for any liabilities of any of the Debtors except as and solely to the extent -- except as expressly set forth herein -- apologies, that was a tongue twister -- and that the Newco transaction shall not be deemed to be a de facto merger or a continuation of any of the debtors.

I believe that that's clear and that Newco would not be a successor or assign. The trouble becomes that my constituencies' recovery is going to be quite a bit in Newco stock. And to the extent that there is a potential $4.7 billion claim that is hanging over that Newco stock, I think it implicates both the viability of Newco, the viability of the plan, and the potential recoveries to creditors. And so I think that now is the time that we should get some clarification on this so that we don't have a gotcha where we send a lot of money, get all the way up to plan confirmation, and then we have a challenge saying no, this $4.7 billion claim somehow travels to Newco with the assets and puts a cloud over the recoveries. Because the fresh start that Newco is going to get here is going to be its greatest asset, and I don't believe that we should move forward without clarifying that point.

THE COURT: Does anybody else want to be heard? Is there anybody for the FTC who wants to be heard? I don't know --

MS. AIZPURU: Your Honor.

THE COURT: Yes.

MS. AIZPURU: This is Katherine Aizpuru from the Federal Trade Commission and I would appreciate the opportunity to be heard on this.

THE COURT: Sure. Go ahead.

MS. AIZPURU: Thank you, Your Honor. I'll lower my hand here.

So the FTC stated its position in our response filed at Docket 3254. But I would just add, Your Honor, that what the settlement actually provides as to the monetary judgement is that the entire amount is suspended as to the debtor-defendants, and that suspension will only be lifted as to the debtor-defendants if the bankruptcy case is closed, dismissed, or otherwise concluded without the estates being fully administered, including any distributions to creditors in accordance with the Bankruptcy Code. So I'm not sure where the concern about the monetary judgement remaining as a cloud on Newco following confirmation of the plan comes from, but that's not something that I believe is a part of the settlement or included in the settlement. And the Committee has proposed

adding to a stipulation between the FTC and the Debtors language that assumes whether Newco is a successor or assign. And that's not something that is contemplated in the commission-approved settlement and not a question that is ripe at this time. So our view is that that proposed addition to the stipulation is both premature and also unnecessary.

THE COURT: May I ask you this question?

MS. AIZPURU: Of course.

THE COURT: Do you agree if the plan is confirmed and the disposition of the property is in accordance with the plan, the creation of Newco, the distribution of its equity all in accordance with the plan, do you agree that the FTC is not asserting any claim with respect to the $4.7 billion if all of those steps occur?

MS. AIZPURU: As I understand it, Your Honor, if all of those steps occurred, then the monetary judgement would not be unsuspended. It would remain suspended and it would not be collectable by the FTC at that point.

THE COURT: I think Mr. Colodny's point, if I'm understanding it correctly, is the creditors want the certainty that if the plan is confirmed and distributions in accordance with the plan occur, including the Newco stock, that the FTC isn't going to suddenly raise its hand and say, well, $4.7 billion, we get to recover that before the value

of Newco is available for the benefit of the creditors. And if I'm understanding you correctly, you're agreeing that if all of those things occur -- namely confirmation, distribution accordance, et cetera, the $4.7 billion judgement in favor of the FTC remains suspended. Is that correct?

MS. AIZPURU: I think that's correct, Your Honor. I wouldn't -- I think that's correct. And I think that the certainty that the Committee is looking for comes from a few different places. It comes from the terms of the suspension as to the debtors, which again would only be lifted if the bankruptcy process were not completed for some reason.

THE COURT: Sure. I mean, there's a liquidation. If it's converted to a Chapter 7, all bets are off with respect to the $4.7 billion judgement.

MS. AIZPURU: Well, I'm not sure that's right, Your Honor. Because, again, as I understand it -- and I'm not an expert in bankruptcy law by any means. But as I understand it, a liquidation can result in the estate being fully administered in accordance with the Bankruptcy Code. And in that scenario, the suspension would continue in place. You know, there would still be distributions. So that's the primary place where the Committee can find certainty.

But there's also Part Five of the settlement,

which provides that the order does not restrain or enjoin the distribution, et cetera, of assets, does not preclude the full distribution of assets held by the debtor-defendants. And it also comes, Your Honor, from the plan itself and from transfer documents associated with the plan. And that's typically where we would expect to see provisions dealing with transfers free and clear and whether purchasers of assets pursuant to the plan take successor liability or become successors. You know, that's where we would expect to see the language that Mr. Colodny referred to in Part Four, the free and clear type language.

So between the plan itself, the terms of the plan, what the transfer documents are expected to say, and the settlement itself, I think that certainty is there, Your Honor.

THE COURT: All right. Mr. Colodny, why aren't you satisfied with that?

MR. COLODNY: Well, Your Honor, I think I'm not satisfied because of the timing issue. Right? Ms. Aizpuru says don't worry, if the plan is fully administered and the bankruptcy estate is fully administered, then we move -- the judgement never gets lifted. And if that all happens on the effective date, that's great. If we're able to distribute Newco stock and we have no holdbacks and we are able to move forward and close the cases right on the effective date --

THE COURT: Well, you know that's not going to happen. It's not going to happen on the effective date.

MR. COLODNY: That's my point. My point is --

THE COURT: But I don't -- stop. I don't see -- you know, there may be a considerable period of time. I mean, there may be appeals. There may be lots of things. So -- but that delayed timing it seems to me doesn't enhance the rights of the FTC with respect to its judgement. The rights are the rights.

MR. COLODNY: Correct. And I guess my concern is that we may be moving on to that point. The FTC may make an argument that notwithstanding the plan language, Newco --

THE COURT: Mr. Colodny, if they want to come back and argue that, I'll be interested in hearing the argument.

Mr. Koenig, is there anything you want to say on this point?

MR. KOENIG: Your Honor, again, Chris Koenig. I took comfort in what Ms. Aizpuru said, that if the plan goes forward and if Newco is created and if distributions to creditors will be made, that will not -- the judgement will remain suspended, is the way I will put it, which I take great comfort in. I understood and agreed with Mr. Colodny's limited objection. I think it makes sense to get some clarification, and I think we got plenty of that at this hearing.

THE COURT: So do I. All right. So the limited objection is overruled.

Ms. Aizpuru, I appreciate your responses to my questions. Okay?

MS. AIZPURU: Thank you, Your Honor.

CLERK: Judge, was the Terraform motion handled this morning?

THE COURT: Say that again?

CLERK: The Terraform motion. Was that handled this morning?

THE COURT: Mr. Koenig?

MR. KOENIG: Judge, I don't believe that we -- we filed a joint reply with the Terraform -- with Terraform. Your Honor had issued an order suggesting that we should file briefs with respect to the issue raised in ResCap. We filed a joint reply that I think moots that. I think we've agreed to provide the -- we have agreed to provide the discovery, so I don't think that we need any assistance from Your Honor unless somebody kicks me and tells me I'm wrong.

THE COURT: That was my understanding. I referred you all to the ResCap decision because I think that it made clear that discovery is still available, but there may be limitations on it. And I understood that the Debtor and Terraform were able to resolve those issues. Does that answer your --

MR. KOENIG: Yes, thank you, Your Honor. It is, Your Honor. And we appreciate your looking out for the Debtor and making sure that if there were extenuating circumstances that would be burdensome, for example, that we had the opportunity to make that argument. Frankly, it's not that burdensome and we're happy to provide the discovery.

THE COURT: That's fine. I'm glad we'll have that resolved.

Deanna, thank you for raising that.

MS. SCHRAG: Good afternoon, Your Honor. Sarah Schrag of Dentons US LLP on behalf of Terraform Labs.

THE COURT: Yes.

MS. SCHRAG: Just for clarification, Your Honor, are you saying that there's no need for entry of an order and that we may proceed with the comfort that we're not violating the automatic stay, et cetera, Your Honor?

THE COURT: Mr. Koenig?

MR. KOENIG: I believe we've committed to provide you with the discovery. So I think we're all set. But I'm certainly not going to raise the automatic stay as a defense.

THE COURT: Ms. Schrag, I think -- and the reason that I pointed everybody to my ResCap opinion is basically the automatic stay doesn't apply. That doesn't mean that

there wouldn't be limitations or restrictions that could be imposed on discovery. And I take the Debtor's agreement that you'll move forward with discovery as resolving the matter. If an issue comes up, you'll come back to me. Okay?

MS. SCHRAG: Thank you, Your Honor. I appreciate it.

THE COURT: All right. Thank you. All right. Does that take care of our agenda for this morning?

MR. KOENIG: It does, Judge. Just one quick matter of housekeeping. We filed a motion seeking authority to provide expense reimbursement for cooperating witnesses. It was heard at the May 17th hearing. I think we can read the writing on the wall that that motion may not be approved. We are evaluating whether to withdraw the motion, frankly, because it's starting to become a bit of a hindrance for these employees, frankly. The D&O carriers are not processing their claims because it's still possible that the company could reimburse those employees. And so the pendency of that motion is actually stopping them from receiving a recovery from the D&O insurance. So I just wanted to raise it. We haven't made any decisions yet. We still need to talk to a variety of the parties who would obviously be affected. But if Your Honor sees a withdrawal of that motion in the coming days, that would be why. It

would just -- we're trying to speed recoveries to these folks. And as I said, I think the fact that the order has not been entered yet, I think we can read the writing on the wall there.

THE COURT: Ms. Cornell, do you want to be heard?

MS. CORNELL: Thank you, Your Honor. Shara Cornell with the Office of the United States Trustee. I haven't spoken with Mr. Koenig on this topic in recent days, but obviously that result would be something that our office would be very happy with. Thank you.

THE COURT: All right. So why don't you see if you can finally work this out with Ms. Cornell and if you can withdraw the motion. If not, put it back on for a hearing and I'll hear it expeditiously. Okay?

MR. KOENIG: Okay. Thank you, Judge. That's all that we have for this morning. And I know we have another hearing at 2:00.

THE COURT: Mr. (indiscernible), your hand is raised, but I think we finished the agenda. What is it you want to be heard on.

UNIDENTIFIED SPEAKER: Yes, sorry, Your Honor. It's a bit out of sequence now. But I wondered why the Debtor did not respond to that question regarding the definition changes in the disclosure statement.

THE COURT: That is all concluded. I've overruled

any objections that haven't otherwise been addressed. All right.

Mr. Koenig, what am I hearing at 2:00?

MR. KOENIG: You're hearing a status conference with respect to our discovery dispute with Mawson.

THE COURT: Okay. All right. So we are adjourned until 2:00 p.m. Deanna, I am going to disconnect. I'll reconnect at 2:00.

CLERK: Okay. Thanks, Judge.

(Recess)

THE COURT: All right, good afternoon. This is Judge Glenn. This is a conference requested by the Debtor in connection with -- I'll describe it as the Mawson discovery dispute. The Court is in receipt of correspondence both from the Debtor's counsel and Mawson counsel. Who is going to speak for the Debtor?

MR. LATONA: Good afternoon, Your Honor. For the record, Dan Latona of Kirkland & Ellis on behalf of --

THE COURT: I'm not hearing you quite clearly. I'm not sure why.

MR. LATONA: Hold on one moment.

THE COURT: Very low volume.

MR. LATONA: Is that better, Your Honor?

THE COURT: That's better.

MR. LATONA: Okay. Again, Dan Latona of Kirkland

& Ellis on behalf of the Debtors. I am joined by my partner, T.J. McCarrick, who is also appearing virtually.

THE COURT: Go ahead.

MR. MCCARRICK: Good afternoon, Your Honor.

THE COURT: Who is appearing for Mawson?

MR. HERZ: Good afternoon, Your Honor. Michael Herz of Fox Rothschild on behalf of the Mawson entities. And my partner, Michael Sweet, is also on the telephone line. He's traveling this afternoon.

THE COURT: Sure. That's fine. Okay. Go ahead. Mr. Latona, are you going to begin?

MR. LATONA: Yes. Thank you, Your Honor. As you mentioned, we are here for a status conference on what we are terming as the Mawson discovery dispute. The Debtors did file a Rule 2004 motion at Docket 3088 and an order was entered at Docket 3091. The relevant affidavits of service were filed at Dockets 3198 and 3199. And, Your Honor, we did not want to file this motion, but unfortunately the circumstances compelled us to. And contrary to what the Mawson entities allege, this is not designed as an effort to intimidate and harass the entities over a commercial dispute. Rather, this is to ensure that the Debtors are taking all steps necessary to protect tens of millions of dollars' worth of estate assets. And this motion was unfortunately necessary to compel the Mawson entities to

provide information to confirm some of the representations that the Mawson entities have made in telephone conversations with Celsius management, but also in emails and publicly-reported filings.

And, Your Honor, just to take a step back and provide some context, the Debtors and the Mawson entities are a party to several agreements as part of a broader transaction with respect to the Luna Squares Midland Mining Hosting Facility.

First, the Debtors in Luna Squares are party to a promissory note that's secured by collateral at the Midland site. That matures on August 23rd, and the aggregate outstanding amount is approximately $8 million plus interest.

Part and parcel of that transaction, Your Honor, the parties entered into a hosting agreement whereby Luna Squares agreed to provide certain hosting and electrical power services to the Debtors, and the Debtor would ship rigs to the Midland hosting site for bitcoin mining. Now, those transactions were all entered into together and the hosting agreement also expires on August 23rd.

And, Your Honor, to be clear, the Debtors did send a notice to the Mawson entities on July 20th informing them that they had elected to terminate the agreement. But Celsius also expressed a willingness to discuss a continued

relationship subject to understanding Mawson's financial condition and where the parties intended on going.

And, Your Honor, this is a negotiation that's been ongoing for several months. In the early part of June is when the parties first discussed the idea of a forbearance. And as those negotiations continued later in June, Mawson made a representation to Celsius management that the collateral that was intended to secure the promissory note was not in the legal entity it was supposed to be in. Naturally, the Debtors requested information evidencing this fact and several days later were provided with an Excel spreadsheet that seemed to confirm that representation made to Celsius management.

As you can imagine, Your Honor, this was very distressing and disturbing to the Debtors. So in an effort to understand what the commercial relationship would look like going forward, the Celsius debtors supplied the Mason entities with a more detailed list of diligence that it required to see before the parties would engage on future discussions with respect to the Midland facility and the hosting agreement.

Your Honor, also as part of the hosting agreement, the Debtors provided Mawson approximately $15 million in deposits as part of that agreement. Again, Your Honor, in representations that the Mawson entities made to the Celsius

debtors, the Mawson entity said it no longer had that $15 million in deposits even though in publicly-reported filings, most recently in their 10-Q filed on May 15th of this year, on Page 28, Mawson represents that it has $15.33 million in customer deposits that it is required to be repaid within 11 months unless those terms are negotiated.

But then, Your Honor, just several weeks ago in an email from Mawson's counsel, Mawson is now taking the position that Celsius has forfeit those deposits. And this was the first indication that the Celsius debtors had that Mawson took that position.

So again, this is not designed to intimidate and harass the Mawson entities. It is designed to get to the bottom of what the status is of tens of millions of dollars of potential estate assets. The debtors are protecting not only those assets, but maximizing the value of their estates for the continued Chapter 11 cases.

And while we would have hoped to come to some sort of agreement with the Mawson entities and not required to be in court, Mawson has so far refused to answer these questions and has stonewalled the Celsius debtor's discovery requests. And so, Your Honor, it is under those unfortunate circumstances that we felt compelled to not only file the motion, but bring this matter before Your Honor since the order provided 14 days for a return date. That expired on

August 9th. The Celsius debtors have yet to receive any discovery from the Mawson entities, but instead they filed a Rule 60(b) motion only two days before the return date.

So, Your Honor, that's the current status of the discovery request. And again, these are time-sensitive matters. As I mentioned, the promissory note matures on August 23rd and the hosting agreement expires on August 23rd.

Now, the Mawon entities not only say that the Celsius debtors have forfeit the deposits, but they also claim that we are in breach of that hosting agreement. The Debtors dispute that assertion, but instead claim that it is the Mawson entities that are instead in breach and the Debtors reserve all rights with respect to that dispute. And we will bring it at the appropriate time if necessary and if we cannot reach a consensual agreement with the Mawson entities.

So, Your Honor, that is the context behind this dispute and the reason why we are here today. If you have any questions regarding the historical context, I'm happy to answer that. If you have any questions on the procedural aspects of the motion, my partner, Mr. McCarrick, is more than happy to answer those.

THE COURT: Thank you very much, Mr. Latona.

Mr. Herz?

MR. HERZ: Thank you, Your Honor. So this has been termed as a discovery dispute. And the whole problem here and I guess the reason we're here today, Your Honor, and as detailed at length in our Rule 60(b) motion and summarized in our letter to the Court on Friday, is that the Debtors have completely disregarded the rules and process here in their attempts to conduct discovery and in doing so have eviscerated the Mawson entities' rights and created this ambiguous situation we find ourselves in today.

At this point, all the Mawson entities are asking for is if the Debtors want to conduct discovery, that they properly follow the process in the Federal Bankruptcy and Civil Rules at which point the Mawson entities will respond appropriately and timely, including filing a motion to quash if deemed appropriate. But that's not an option they had under the Rule 2004 order that was entered on July 26th.

So to give some additional background, as Mr. Latona noted, the parties were engaged for much of July negotiations regarding the Mawson entities' request for a forbearance under the promissory note. During this time, the Mawson entities did provide responses to various informal document requests on a rolling basis, but the requests from the Debtors became increasing onerous. And my understanding is that at some point, the Debtors basically stopped being responsive, or it was clear from discussions

that there was no longer -- the discussions were no longer being productive, and the Mawson entities ended up paying the balance rather than continuing the forbearance discussions. And there's nothing right now due under the promissory note.

Several days later, on about July 25th, the Debtors filed this ex parte motion requesting authority to issue a Rule 2004 subpoena. That's in the caption of the motion. And the next day, the Court entered the 2004 order, which again in its caption and in its introduction seek the issuance of a Rule 2004 subpoena.

However, as detailed in our papers, the order, despite its caption and introduction, instead directed the Mawson entities to respond to discovery requests under the Federal Rules of Civil Procedure, including responding to document request and interrogatories within 14 days. In effect this ex parte 2004 motion was not a motion requesting authority to issue a subpoena despite how it was dressed up, but a motion seeking to compel the Mawson entities to respond to discovery requests, but without providing the Mawson entities with an opportunity to respond to the motion, which notably was not supported by any sworn statements of evidence, or an opportunity to seek to quash a subpoena because there was no subpoena actually issued. If there had been, we likely would have filed a motion to quash

a subpoena with the 14 days.

As such, because of this nebulous situation, the response, particularly after the difficulty in dealing with the Debtor's representatives, was to file the Rule 60(b) motion, which was filed 12 days after the order, which I think is imminently reasonable time under Rule 60(c).

Additionally, the Debtors filed the Rule 2004 motion despite never having issued any formal discovery previously or requesting permission to do that from the Court and in the absence of a contested matter at that point from the parties.

A further notable defect in the Debtor's process here is they never properly served a 2004 order. Fox Rothschild was not authorized to accept service. The only copy of the order that the Mawson entities received -- and this again is noted in our papers -- was found in a security shack at one of their Pennsylvania locations and without the actual discovery request attached. This location is not the Mawson entity's principal place of business, nor was it their registered agent. At one point my partner, Michael Sweet, asked Debtor's counsel if they actually issued a subpoena under the order. And instead of answering the question, counsel responded with threats, which as Your Honor can see in the emails attached to our Rule 60(b) motion, has unfortunately become a pattern in dealing with

Debtor's counsel where there's not just threats, but unprovoked insults.

The Debtors apparently at some point I think recognized the deficiencies in how they proceeded, because on August 10th, last Thursday, they set what looks to be a Rule 45 subpoena to the Mawson entity's registered agent attaching the aforementioned interrogatories and document requests.

The problem with that subpoena, however, is that, again, it wasn't authorized by the Rule 2004 order and it contains requests such as interrogatories that are inappropriate under Rule 2004. And Rule 2004, again, was the pretext for that ex parte Rule 2004 motion.

The irony in all this, Your Honor, is that the only party currently in default is the Debtors. They failed to pay the over $1.6 million payment due in July to the Mawson entities under the parties' colocation agreement.

Another payment is due this week. It's unclear that payment is going to be made. The cost to operate this facility, which I understand is fairly important to the Debtor's operations because it hosts these mining equipment, is exorbitant. The June electricity bill alone was over $1.1 million. And I'm sure that cost likely has gone up as the summer has gone on.

So the Debtors have basically continued to operate

this facility for two months now without paying Mawson at the expense on the back of Mawson. And, you know, one would think that the Debtors would be more amenable to discussions. But instead -- and again, it's I think readily evident in the emails we've attached -- they seem to want to intimidate and harass and insult the Mawson entities rather than having a real discussion about how to resolve these issues and how to pursue discovery properly.

So the Mawson entities, we're happy to discuss the next steps. But this process -- the Debtors want discovery, the process really needs to start with the Debtors conforming to the appropriate process and rules whereupon the Mawson entities will avail themselves of their rights under the rules, including maybe filing a motion to quash if necessary. But I think that's where the discussion has to start. I don't think there's anything else pending before the Court right now other than a Rule 60(b) motion, which is returnable on September 7th.

THE COURT: Mr. Latona, could you address the issue of service of the subpoena on Mawson?

MR. KOENIG: Yes. For that I will turn the lectern over to my colleague, Mr. McCarrick.

THE COURT: Mr. McCarrick?

MR. MCCARRICK: Thank you, Your Honor. T.J. McCarrick Kirkland & Ellis, on behalf of the Debtors.

I think addressing the service of the subpoena, there's two service-related issues that Mr. Herz raised. The first issue is the service of the Rule 2004 motion and whether or not that was conducted on an ex parte basis. The first thing I would say, Your Honor, is that we do reject the suggestion the motion was filed or the 2004 was entered without --

THE COURT: Mr. McCarrick, I just want to know about service. Let me say it very clearly. The procedure that was followed in the issuance of the subpoena is very typical and the normal procedure in this Court. The applications are filed ex parte. I review it. It does not affect the rights of the recipient of the subpoena to timely -- timely -- object to the subpoena. But Mr. Herz suggests that you didn't properly serve the subpoena. I just want you to address the service issue.

MR. MCCARRICK: Yes, Your Honor. The Rule 45 subpoena, I think as Mr. Herz acknowledged, was served on their registered agent on the date here, August 10th at 2:45 p.m. And I think that Mr. Herz and the Mawson entities have conceded that in their letter asking for the status conference to be de-calendared. But even today they continue to I would say be elliptical about whether or not they intend to seek an order to quash or to raise objections --

THE COURT: Let me ask you, when was the 2004 subpoena served and upon whom?

MR. MCCARRICK: So the 2004 motion, Your Honor?

THE COURT: No. The 2004 subpoena was issued. And that's ex parte. But when was it served on Mawson?

MR. MCCARRICK: August 10th was the 2004(c) Rule 45 subpoena.

THE COURT: All right. If the deadline for responding was August 9th, how is it you didn't serve it until August 10th?

MR. MCCARRICK: Your Honor, I think the answer is that we had assumed that Mawson was going to comply after receiving a copy of the motion and the order and did not know whether or not service or process was actually going to be necessary. In the spirit of cooperation, we were trying to give them notice one, when the motion was filed, two, when the order came down. And then there, give them the benefit of the full period of time to determine whether or not they were going to comply.

THE COURT: So you agree though that the 2004 subpoena was not served on Mawson until after the purported response date of August 9th, correct?

MR. MCCARRICK: Yes, Your Honor.

THE COURT: All right. What about Mr. Herz's argument that the subpoena improperly seeks responses to

interrogatories rather than document production?

MR. MCCARRICK: I would say to arguments, Your Honor. Mr. Herz is certainly correct that under Rule 45, interrogatories are not authorized. What I would say is, again, in the interest of avoiding a Rule 30(b)(6) deposition or a corporate deposition, we thought that we would be able to get the information at a low burden (indiscernible) these interrogatory requests. And of course if Mr. Herz wishes to move to quash those or move for a protective order on interrogatory responses, he is entitled to do so. And we of course reserve the right to seek a corporate deposition on those same issues.

THE COURT: So when I issue ex parte subpoenas or authorize the issuance of ex parte subpoenas, which is the practice and has long been the practice of this Court, response to the subpoena depends on proper service. The fact that you may have presumed that if it was served on its counsel, that that was enough, that doesn't prevent them from arguing that it wasn't timely served. What's your response to that?

MR. MCCARRICK: Your Honor, I think the biggest response to that we would say at least that 2004 notice has timely been served insofar as this. Luna Squares isn't a true third party, never been involved in the action before, Your Honor. They filed a proof of claim for $1.84 million.

That's Claim Number 17211 and it is acknowledged in the Rule 60(b) response. And so to the extent that they have filed a proof of claim that (indiscernible) submitted the Court's jurisdiction -- and it's not entirely clear to me now why they would be able to argue that the standard mailing and service process of Stretto would not actually have provided the Mawson entities proper service once they have availed themselves of the Court's jurisdiction.

And for the idea, Your Honor, that submitting a proof of claim submits you to a Rule 2004 discovery request, I would say In re China Fishery Group, 2017 --

THE COURT: You don't have to argue that. It clearly -- in my view, they clearly subject it to the Rule 2004 process. That procedure was all proper in my view. The question I have is about service. You've answered that it wasn't served until August 10th. And then the issue becomes to me what's a reasonable period for them to respond. Clearly, you can't be complaining they didn't respond when you hadn't properly served it. Ordinarily, these things are resolved without, if you will, the technicalities. But there's nothing that prevents Mawson from asserting its rights, including that they be properly served. The question in my mind is if they were served on August 10th, particularly when their counsel had plenty of notice about it, what is now a sufficient time to require

their response to the document requests. The issue about interrogatories is a different matter because those are not authorized by Rule 2004.

So just tell me, what is the documents that you've requested from Mawson?

MR. MCCARRICK: Yes, Your Honor. The documents that we've requested in broad categories are documents about the receipts of deposits paid by the Debtors. Obviously would moot any argument that the Debtors didn't pay those deposits. Documents about the use and disposition of those deposits, which will help explain the reason or the delta between the rigs that were sent to Mawson and the rigs that were deployed. Documents about Mawson's acknowledgement that it owes Celsius those deposits back, which it has acknowledged in multiple public filings, including its May 15th 10-Q. Documents related to the deployment and delivery or rigs, which is relevant to Mawson's claim that Celsius is not entitled to offset invoices against deposit amounts because it failed to deliver equipment on time. Documents related to ownership liens against disposition of and use of proceeds from collateral. And documents related to curtailment, which are relevant to Mawson's claims about energy costs.

THE COURT: All right.

MR. MCCARRICK: And if you're asking me, Your

Honor, I would say given the notice here and the fact that it was sought informally, that at least their counsel has certainly been on notice that they've been served, I think one week would be reasonable. I don't expect there to be a high volume of documents.

THE COURT: Mr. Herz?

MR. HERZ: Well, Your Honor, the subpoena that was ultimately served on 8/10 has a return date of 8/24 explicitly in it. I think it would be inappropriate to expedite that date. And I will note, Your Honor, as reflected in I believe Exhibit C to our Rule 60(b) motion, my partner, Michael Sweet, emailed Mr. Latona on August 2nd and said was a subpoena issued. And again, instead of responding to that question or even issuing a subpoena as they should have, the email response we got from counsel was just threats.

So it sounds like based on everything we've seen that the Debtors really did not adhere to process here in any regard. I think it's still questionable whether -- the order itself doesn't even reference issuing a subpoena. But if the inference is there, it's there. We're happy to meet and confer to talk about the scope of discovery.

THE COURT: We're doing that right now.

MR. HERZ: Okay. Well --

THE COURT: I don't like the fact -- you know,

well, let me leave it at that. We're doing it right now.

MR. HERZ: Okay. Sorry, Your Honor, if I cut you off. You go on.

THE COURT: Go ahead.

MR. HERZ: I was just going to say, I mean, to the extent we believe there's requests that are overly-broad or intended to harass, I mean, that's something we could meet and confer about in an attempt to narrow down the production.

THE COURT: Mr. McCarrick, is it correct that the subpoena included a response date of August 24th, not the 21st?

MR. MCCARRICK: Your Honor, I would have to double check that, but I have no reason to doubt what Mr. Herz said.

THE COURT: If you want to double check it, do it now.

MR. MCCARRICK: Give me one second, Your Honor.

MR. HERZ: Your Honor, if it helps, I am actually looking at the subpoenas. August 24th at 5:00 p.m. Eastern. But I'll let Mr. McCarrick confirm as well.

MR. MCCARRICK: That's correct, Your Honor.

THE COURT: All right. And does the Subpoena request a deposition?

MR. MCCARRICK: It does not this time, Your Honor.

THE COURT: All right. I am going to require a response to the subpoena by that date of August 24th that was included within the subpoena itself.

I will tell you right now, Mr. Herz, if you're objecting on scope or burden, it had better be a good objection or you're going to wind up getting sanctioned if you don't produce the documents. Okay? I am very concerned by what I read in the letters that August 23rd is a very important date because of a termination date. The procedure that was followed is clearly correct.

Mr. McCarrick, if you want to serve a 2004 deposition notice, do that promptly today. And if you want to take a deposition on August 24th, I'm going to permit you to take the deposition on August 24th.

MR. MCCARRICK: Yes, Your Honor.

THE COURT: In terms of the 60(b) motion, that's not on for today. I have real questions whether that's the appropriate procedure. But we'll wait until -- if that's noticed for hearing, I'll wait until then and I'll give the Debtor an opportunity to respond to that motion. But the -- Mawson has conceded that it was served with the subpoena on august 10th. The 24th would give them the 14 days that was originally provided. I believe that is a reasonable period of time.

If the Debtor wants to serve an additional Rule

2004 subpoena for deposition testimony. With respect to the documents that are going to be produced that day, I'm going to permit that. Serve it today.

Is there anything else I need to deal with for today? First for the debtor.

MR. MCCARRICK: The only question I would have, Your Honor, is if Mr. Herz is authorized to accept that deposition notice or if we should go back to the (indiscernible).

THE COURT: Mr. Herz, what's the answer to that?

MR. HERZ: Sorry, I was -- we can accept service. I'm sorry, Your Honor. That notice --

THE COURT: Thank you. I appreciate that. I expect -- this doesn't come as a surprise to Mawson and, you know, I'm respecting Mawson's rights to insist on service. It wasn't made until the 10th. I'm reflecting that now. So I would hope that the two of you would work out any discovery disputes. I really expect if there are issues about scope, that you will both be reasonable in trying to work that out. If you can't, contact my chambers and we'll have another expedited hearing about that. I want this dispute to be fairly dealt with and the Debtor getting the discovery that it wants to get and is entitled to.

Anything else for today?

MR. HERZ: Your Honor, I will just quickly note

our client is in the process of producing documents. So we hope for a collaborative approach going forward and hope that when we -- if and when we do reach out to counsel, we'll have reasonable and fair discussions going forward.

THE COURT: All right. I hope so, too. Anything else from the Debtor?

MR. LATONA: No, Your Honor. That's all. Thank you.

THE COURT: All right. We are adjourned. Thank you very much.

(Whereupon these proceedings were concluded)

I N D E X

RULINGS

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing transcript is a true and accurate record of the proceedings.

Sonya Ledanski Hyde

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501

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